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ABSTRACT

This student guide is intended to assist persons employed as supervisors in ensuring equality of treatment and opportunity in the workplace. Discussed in the first three sections are the following topics: equality at work (the meaning of the term equality, the importance of equality at work, inequality and unfairness at work, and procedures to determine whether inequality has occurred); laws relating to equality (who the law protects, what it aims to achieve and what it says, types of unlawful discrimination, and how to decide whether the law has been broken); ways of achieving equality in the workplace (preventing unlawful discrimination, making a commitment to equality, and achieving real equality). Each of these sections contains an introduction, sections of instructional text that are interspersed with reinforcing learning activities, and a section summary. The fourth part of the guide includes a series of performance checks (an end check, a tutor check, and a work-based project). Concluding the guide is a unit review that reviews the objectives addressed in the guide, describes related extension courses, and lists recommended reference materials. (MN)

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# SUPERVISING

## INDUSTRIAL RELATIONS

# 86: Equality at Work

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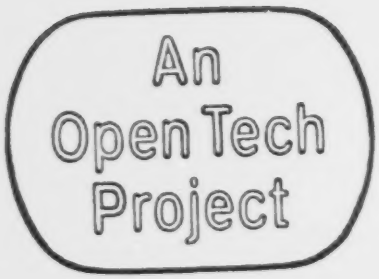
86: EQUALITY AT WORK

Rosemary Harrison

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**Rosemary Harrison**
**Equality at Work (Number 86 in the CHOICE SERIES of learning units)**

**Series Editor: Harry V Pardue**
**Northern Regional Management Centre.**

## WORKING GUIDE TO THIS UNIT IN YOUR DEVELOPMENT PROGRAMME

**This Unit** is now your personal property - it's not for handing back to your training officer or to a tutor. It is your working book.

**The Contents** will increase in value to you each time you write on one of its pages. This is a working text for your personal notes - without notes its value is limited.

**Qualifications** forget about certificates and diplomas - you don't need them for this programme. What you do need is the wish:-

* to do your job better
* for personal development

**Your study time** is really up to you - we guess you will need about 8 hours in total. But it's your time - spend as long as you like.

**How am I doing?** you can judge for yourself by checking out how well you cope with the tasks we call Activities and Self Checks which occur throughout the unit. You can also get the Tutor Check and/or the Work Based Project to your tutor for an unbiased view of your progress.

**Work Pace** it's really up to you and depends on your interest. However, if you do well on the Activities and Self Checks, you could afford to speed up a little. Of course, if you don't do as well as you expect then you could slow down a little or flick back into the unit for a quick review of the more difficult ideas.

**When in doubt** - ask or seek help from:

* your family and friends
* colleagues at work
* your company training staff
* other open learners
* your tutor, by phone, by a visit to your support centre or by dropping your tutor a line through the post.

**Don't worry** if what you learn doesn't seem to be of use to you now, remember that times change - it may be useful one day. Anyway, just knowing more improves personal confidence.

So now make a start:-

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86: EQUALITY AT WORK by Rosemary Harrison

ABOUT THIS UNIT

As a supervisor you will know how important it is to your workteam that each person knows they are being treated fairly at work, and that all share the same opportunities for, for example, training, development, promotion, as well as for special benefits like overtime and bonus payments.

The purpose of this unit is to look at your responsibility for ensuring that there is equality of treatment and opportunity in the workplace.

We will consider the importance of setting up ways of ensuring that poeple are treated equally and of constantly watching what is happening to make sure that no inequality of treatment creeps in.

The unit covers common problems that can threaten equality at work, and shows some practical steps that you can take to identify and help to overcome these problems.

IN THIS UNIT WE WILL

* discuss the importance of ensuring that full equality of treatment and opportunity exists in your workplace

* review the role of the supervisor in this process

* consider the ways in which inequality can develop at work, the forms it can take and when it breaks the law

* help you to identify where inequality exists, who it is affecting, and how it can best be tackled in order to achieve equality of treatment and opportunity for all your workteam.

AUDIO TAPE Side 1

Before you continue through the unit, you should now listen to Side 1 of the audio tape that accompanies this unit. You will find it useful if you refer to the unit objectives shown below whilst you listen to the tape. You may wish to make the objectives clearer to yourself by making a note or two on this page as you listen.

OBJECTIVES

When you have worked through this unit you will be BETTER ABLE TO:

* understand why equality of treatment and opportunity is important in order to ensure good working relationships and to make the best use of everybody's abilities

* understand what inequality means, in legal and in practical terms; how it can arise at work; and the main forms it can take

* know how to avoid unlawful inequality of treatment taking place at work

* achieve a real commitment to equality, by, and for, everyone in your workplace

## PART A EQUALITY AT WORK

### 1 Introduction

As a supervisor, you have probably often heard people complain about 'not getting a fair crack of the whip'. But what do you do when a member of your team comes to you with the complaint that they're not being treated fairly, or that you are treating one person differently from others? Do you know whether either of these complaints raises an 'equality' issue? Whether you could have broken the law? What to do next?

In this unit we are going to look at three questions in turn.

* Why does equality at work matter - and how does the supervisor know if inequality has occurred?

* How does the supervisor know if the law has been broken?

* What should a supervisor do to achieve equality in the workplace?

### 2 The meaning of equality

In order to know whether there is inequality at work, we need to know what 'equality' means. Think about the word for a minute or two, then write some ideas below.

ACTIVITY 1
Time guide
5 mins

Try to think of two or three alternative meanings for 'equality'.

* _____

* _____

* _____

I expect you've written something like:

* the same opportunities being open to everyone

* everyone being treated in the same way

* everyone being on an equal footing

Any of these definitions, or something like them, sums up well what we mean in a general way by 'equality'.

But we need to narrow that definition down a bit.

---

ACTIVITY 2
Time guide
2 mins

Read the following statements and decide whether each of them is true or false.

* Equality means everyone must like one another.

TRUE/FALSE

* Equality means everybody is equal.

TRUE/FALSE

* Equality means everybody has more chance of moving to other similar jobs.

TRUE/FALSE

---

Sadly, each of these is false, and quite impossible to achieve! All that equality means is that no-one is treated less favourably than anyone else. So inequality at work occurs when:

**A PERSON OR GROUP IS TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

For the moment this definition will do. However, by the end of this part of the unit we will see that it is not quite accurate enough, and we will add one important word - perhaps you have already guessed what it is.

## 3 The importance of equality at work

What sort of difficulties would you face if people felt that there was inequality of treatment in your workplace?

---

ACTIVITY 3
Time guide
4 mins

From your own experience, jot down two problems you would have to deal with.

* _____

* _____

---

Typical difficulties that you might face include:

* morale would be low and relationships between members of the workteam and their relationship with you would suffer

* the best use would not be made of everybody's abilities

* there would be high sickness, absenteeism and wastage resulting from people's discouragement with the job

* there would be conflict leading to lost production and possibly even strikes

* there would be the possibility of legal action against the company

* there would be the possibility that you would be found personally responsible in law for discrimination in the workplace.

I expect that you have thought of others, but this list is probably enough to help us see the practical and legal reasons why achieving equality at work is so important for the supervisor. No-one likes to feel that they are being treated unfavourably - in other words, that because of the way they are being treated they are suffering some disadvantage.

EQUALITY OF TREATMENT AND OPPORTUNITY IS IMPORTANT IN ORDER TO ENCOURAGE GOOD RELATIONSHIPS IN THE WORKPLACE AND TO MAKE THE BEST USE OF EVERYONE'S ABILITIES

## 4 Inequality and unfairness at work

Now let us think more closely about inequality.

---

ACTIVITY 4
Time guide
4 mins

Think about the following statements, and decide whether you think each of them is true or false.

a) Inequality at work means that everyone is not equally successful.

TRUE/FALSE

b) Inequality at work means that someone or a group is treated unfairly.

TRUE/FALSE

c) Inequality at work means that someone or a group is unjustifiably treated in a less favourable way than others.

TRUE/FALSE

---

Statement a) You are quite right if you have put false. As we have seen, inequality is not about people not being equal. It is about some being treated less favourably that others, so that they suffer some disadvantage that the others do not.

Statement b) This is not so easy, and you may well have put true. However, there is a difference between being unfair to people, and treating someone in an unequal way compared to others. When we talk about 'unfairness', we mean that people are not getting their rights: justice is not being done. Certainly it is unjust, unfair, if there is inequality at work, because a person or group is thereby denied something our society sees as a basic human right. But inequality is only one kind of unfairness. Even if everyone were to be treated equally at work, so that no inequality existed other forms of unfairness could still exist. So it is false to say that inequality at work simply means someone is treated unfairly. Inequality means something more precise and different than that.

Statement c) If you have put true you are quite right, and you have found the missing word that makes our original definition of inequality complete

**INEQUALITY OCCURS WHEN A PERSON OR GROUP IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

This word UNJUSTIFIABLY is a vital one. After all, however much you may want to treat everyone equally at work, sometimes it is impossible to do so - there is some overwhelming reason which prevents your doing so. Take the following case.

---

ACTIVITY 5
Time guide
3 mins

Three young assistants were serving in a butcher's shop. Tom had recently grown his hair long and straggling. Bill and Mary had short and tidy hair. The manager had repeatedly told Tom that unless he got his hair cut short, or tied it back neatly whilst he was in the shop, he could not stay in the job. Tom refused, and finally was dismissed.

The manager had a strong enough justification for his treatment of Tom to make it clear that this was not a case of inequality at work. What do you think the justification was?

* _____

_____

_____

_____

You have probably, and correctly, put something like 'hygiene' or 'to ensure that the meat was not exposed to germs' or 'to protect customers from contaminated meat'. Certainly the manager treated Tom differently from the others, in a way that put Tom at a disadvantage in the end - but his reason for doing so was because of the overwhelming need to ensure good hygiene in a fresh food shop. The manager, incidentally, was able to prove that he had fully explained his reason to Tom and that no-one was ever allowed to serve in the shop who did not meet clearly defined hygiene standards - further proof of the manager's case that his treatment of Tom was fully justified.

So we can now say that:

* Inequality occurs when person or group is unjustifiably treated in a less favourable way than another is, or would be, treated in the same sort of situation.

* Some inequalities at work cannot be avoided. The essential thing is that, if they exist, there is a strong justification for them.

In the introduction to this part of the unit we mentioned two typical instances which might be your first warning that you may have a problem over equality - a complaint of unfair treatment or an accusation that you've treated one member of yor workteam differently from another.

---

SELF CHECK 1
Time guide
3 mins

Bearing in mind that we have decided that

INEQUALITY OCCURS WHEN A PERSON OR GROUP IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION

look at each of these situations again. Tick whichever seems to you to be the right decision - probably, probably not or no way of knowing yet - in the space beside each statement.

a) Someone in your workplace complains to you that they are not being treated fairly.

Has there been inequality of treatment?

| | |
|---|---|
| Probably | |
| Probably not | |
| No way of knowing yet | |

b) You have been accused of treating a member of your workteam differently from the others.

Has there been inequality of treatment?

| | |
|---|---|
| Probably | |
| Probably not | |
| No way of knowing yet | |

---

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. a) Here, someone is complaining of unfair treatment. You do not know whether such treatment has actually occurred, and you do not know what 'unfairness' may be involved. It may or may not be something to do with inequality, so you have no way of knowing yet. b) Here, you are accused of treating one person differently from others. The accusation may be false; or you may indeed have treated one person differently, but there may be strong justification for this - if there is, then there has not been inequality in your workplace, either way, there is no way of knowing yet.

If you put 'no way of knowing yet' against both statements, you are making an important point:

**BEFORE MAKING ANY DECISION, GET THE FACTS**

When you are looking into any complaint, or checking a situation in your workplace, you must get all the important facts. This is vital in issues related to equality at work, because such issues can have so many legal as well as practical implications.

## 5 Has inequality occurred?: a checklist

From the way in which we have analysed these two incidents, we can see that a simple checklist will help us to decide whether, in a particular situation, inequality of treatment has occurred.

1 What are the FACTS?

2 Who, if anyone, has suffered from DIFFERENCE IN TREATMENT?

3 What, if any, DISADVANTAGE has occurred as a result from any difference in treatment?

4 What, if any, strong JUSTIFICATION exists for any unfavourable treatment?

**FACTS**

**DIFFERENCE IN TREATMENT**

**DISADVANTAGE**

**JUSTIFICATION**

Let's try out the checklist on another situation.

ACTIVITY 6
Time guide
4 mins

Mr Singh, a Sikh, applied for a job on the production line in a factory manufacturing sweets. As an orthodox Sikh, he wore a beard. He was told he could have the job, providing that he shaved off his beard. His religion forbad him to do this, so he failed to get the job.

a) FACTS

Jot down four pieces of information, not given here, that you will need before being able to decide whether or not Mr Singh has suffered from inequality of treatment.

* _____
* _____
* _____
* _____

Your responses may be included in the following list. You may also have thought of other pieces of information you feel you need.

* Is the non-wearing of beards a stated condition of employment?
* Have other bearded applicants been treated in the same way as Mr Singh?
* Is there any other reason why Mr Singh did not get the job - eg lack of ability?
* Why was Mr Singh told to shave his beard?
* Are there any rules in the factory about non-wearing of beards by existing workers?
* Do any existing workers wear beards?
* Is there any strong justification for non-wearing of beards in the factory?

Here are the full facts that an investigation into this case actually revealed.

Mr Singh, a Sikh, applied for a job in a factory manufacturing sweets. A factory rule forbad the wearing of beards by any employee who came into contact with the products, and this rule was strictly applied to existing workers, and was a condition of employment for new workers. The appplication of this rule meant that Sikhs, whose religion forbids them to shave their beards, were virtually ruled out of taking such jobs. However, the employer maintained that the rule was justifiable on grounds of hygiene, irrespective of the colour, race or nationality of applicants and job-holders. He was able to show that no-one with a beard had ever obtained or kept a job in contact with the products.

Mr Singh was fully qualified to do the job, and was offered it, but when told that he must obey the rule and shave his beard off, he declined to do so, since he was an orthodox Sikh, and could not disobey the rules of his religion.

---

ACTIVITY 7
Time guide
5 mins

Now that we know a whole lot more, we can move on to apply the rest of our checklist.

b) DIFFERENCE IN TREATMENT

Who, if anyone, has received difference in treatment?

* _____

c) DISADVANTAGE

What, if any disadvantage has occurred as a result of any difference in treatment?

* _____

_____

d) JUSTIFICATION

What, if any, strong justification exists for any unfavourable treatment?

* _____

_____

---

Now let's look at the answers to these questions.

b) DIFFERENCE IN TREATMENT

Mr Singh was treated differently from non-bearded people. On the other hand he was not treated differently from other bearded people - so there may or may not be inequality here. Let's pass on to the next answer.

c) DISADVANTAGE

Mr Singh lost the job - because he wouldn't shave off his beard. So due to being treated differently to non-bearded people, he lost the job. But on the other hand, any bearded person would have lost the job too - so we are still not sure whether inequality has occurred here. Let's look at the last, vital, answer.

d) JUSTIFICATION

Hygiene - as in our case about the assistants in the butcher's shop, hygiene near food products is clearly a very strong justification here; and the firm was quite clear about it - no-one, whether in a job near food products or applying for such a job, has ever been allowed to wear a beard. This uniform treatment showed just how important that hygiene factor was.

So did inequality occur? No - the Industrial Tribunal who investigated this case decided that the justification for non-wearing of beards was so strong that no true inequality occurred in this case. Again let's remember:

**INEQUALITY OCCURS WHEN A PERSON OR GROUP IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

Did you notice the way in which our 4-point checklist helped us to build up an increasingly clear understanding of all the issues in the case until, at the end, we could confidently answer the question 'did inequality occur here'? Let's try our checklist once more.

ACTIVITY 8
Time guide
5 mins

This time, I will give you all the facts straightaway, so that there is no need to

a) GET THE FACTS

They are all given below. You can therefore pass straight on to points b), c) and d) on your checklist after reading the case:

A West Indian skilled fitter applied for a job with a large motor manufacturing company. He was well qualified for the job, and management wished to appoint him. Both the company and the trade union had a policy of equal opportunity for all workers, regardless of colour, race or sex.

All the other workers in the section where the job was located were white. A union meeting was held, and a resolution was passed that the white workers would not work with a black person. The two shop stewards told management, who then decided not to appoint the black applicant. One white worker disagreed with the union action. He reported the firm for inequality at work.

Now try answering the rest of the questions in our checklist.

b) DIFFERENCE IN TREATMENT

Who, if anyone, has received difference in treatment?

* _____

c) DISADVANTAGE

What, if any disadvantage has occurred as a result of any difference in treatment?

* _____

_____

d) JUSTIFICATION

What, if any, strong justification exists for any unfavourable treatment?

* _____

_____

So has inequality at work occurred here?

YES/NO/UNSURE

Let's look at the answers now.

* Certainly the West Indian fitter was treated differently from the way any white applicant would have been - although clearly any coloured applicant would have been treated in the same way as him.

* Certainly the fitter suffered a disadvantage - he did not get the job.

* Was there strong justification for such unfavourable treatment? Questions of justifiability are not always easy to answer - and you probably found this one difficult. On the one hand, the virtual certainty of management facing a strike if they employed the black fitter might be seen as a compelling reason for not employing him. But let's consider the other side of the story.

* There was an equal opportunity policy in the firm, to which management and union were committed, and which they had agreed to apply regardless of colour, etc. So to reject a person simply on grounds of colour went right against this policy.

* Can such a rejection simply on grounds of colour ever be justifiable? Our own society condemns racism. Surely such a rejection encourages racism, and will lead to more inequality in that firm?

* To reject a coloured person because of threats from white workers could be seen as giving way to blackmail.

In fact, for these reasons, the Commission of Racial Equality who considered this case decided that the firm had no justification for the treatment of the fitter, and that it was a case of inequality at work.

We will come back to this case later, because for several other reasons it is an important one in relation to inequality. For the moment, though, we can see again how our 4-point checklist helps us to build up an increasingly clear understanding of all the issues in a case until, at the end, we can answer with reasonable confidence the question 'did inequality occur here?'.

## 6 Summary

* Equality of treatment is important in order to encourage good working relationships and to make the best use of everyone's abilities.

* Inequality occurs when a person or a group is unjustifiably treated in a less favourable way than another is, or would be, treated in the same sort of situation

* Some inequalities at work cannot be avoided. The essential thing is that, if they exist, there is a strong justification for them

* 4-point checklist

  GET THE FACTS

  IS THERE A DIFFERENCE IN TREATMENT?

  IS THERE A DISADVANTAGE?

  IS THERE A JUSTIFICATION?

## PART B THE LAW RELATING TO EQUALITY AT WORK

### 1 Introduction

Let's remind ourselves again of the three questions we are dealing with in this unit:

* Why does equality at work matter - and how does the supervisor know if inequality has occurred?

* How does the supervisor know if the law has been broken?

* What should the supervisor do to achieve equality in the workplace?

We have now reached the second question - knowing about the law. This unit is not a legal textbook, and so it can only give you guidelines, not an authoritative statement of the law: only courts or tribunals can do that. Let's therefore look, in this Part, at some of those guidelines.

REFERENCES 1 and 2 page 87

The law of the land consists of many rules, which apply across all society in order to help society survive and prosper. There are other sorts of rules too - workplace rules, and custom and practice. We will be looking at issues to do with those in Part C. Let's think again about the law of the land.

* THE LAW AIMS TO PROTECT NOT ONLY SOCIETY AS A WHOLE, BUT ALSO THOSE WHO ARE TREATED UNFAVOURABLY WITHIN IT

In Part B, we are going to find guidelines on:

* what the law on equality aims to achieve

* what, in general terms, the law says about inequality at work

* what are the main types of discrimination forbidden by law

The supervisor must be clear on these three questions because, in the law relating to equality, supervisors:

* may be found individually liable if the law is broken, either by themselves or by someone they supervise

### 2 Who the law protects

EXTENSION 1 page 79

So who are the main groups in our society who are treated unfavourably in respect of equality at work? Two of the most disadvantaged groups are women and racial minorities.

## 2.1 Women and employment

Let's look at women first. Do you know the answers to the following questions?

---

ACTIVITY 9
Time guide
4 mins

Put a tick against the figure you choose.

a) In 1901 women made up which percentage of Britain's labour force?

| | |
|---|---|
| 29% | |
| 16% | |
| 9% | |

b) In 1981 the figure had risen to which percentage?

| | |
|---|---|
| 35% | |
| 60% | |
| 40% | |

c) Between 1981 and 1986, it has been estimated the number of men in the workforce will increase by which figure?

| | |
|---|---|
| 500,000 | |
| 100,000 | |
| 700,000 | |

The number of women will increase by which figure?

| | |
|---|---|
| 600,000 | |
| 100,000 | |
| 1,300,000 | |

d) Of all employed women, the percentage in clerical or service work (canteen assistants, office cleaners etc) is which percentage?

| | |
|---|---|
| 15% | |
| 52.3% | |
| 81.6% | |

---

Here are the actual figures:

a) 29%

b) 40%

c) 700,000 and 1,300,000

d) 52.3%

Now try another set of figures.

---

ACTIVITY 10
Time guide
2 mins

This time just write down the percentage you think is correct, and then see how close you have come to the actual percentage.

Women make up:

a) _____% of all canteen assistants, counterhands and similar workers.

b) _____% of charworkers and office cleaners.

c) _____% of nurses.

---

Here are the answers.

a) 96.8%

b) 91.7%

c) 91.6%

From these figures, and many more like them - for example, only 11.9% of all employed women are in professional, technical or artistic work, and those that are include all women who are teachers, nurses and so on - it is clear that women make up almost half of today's part-time and full-time workforce, yet generally occupy poorly-paid and low-level jobs. Women at work also carry a far heavier burden of domestic responsibility than men. Survey after survey shows that women suffer not only in terms of the type of work they are able to obtain, but also - once they are in work - in opportunities available to them for education, training, transfer and promotion and in the ways they are treated in relation to redundancy. If you look around your own organisation, you might find it interesting to note roughly how many women there are in supervisory jobs, in middle and senior management jobs and in professional or technical jobs, compared to men.

There is no doubt that in Britain - despite the efforts of recent legislation on equality - women constitute a group who still suffer from inequality in employment, because both in seeking for job and when occupying jobs they:

**ARE UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHERS ARE, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

## 2.2 Racial minorities and employment

The other groups who are treated particularly unfavourably in employment come under the general heading of "racial minorities". The term means minorities in Britain who share one or more of the following characteristics:

Race

Colour

Nationality

Ethnic or national origins

The word 'ethnic' simply means:

a part of, or related to, someone's race

So language, customs and culture are all 'ethnic' because every race or nationality has its own language, main religion or set of beliefs, and culture.

Now let's look at some questions about racial minorities: see how many answers you get right - for most people, the score is very low!

ACTIVITY 11
Time guide
5 mins

Tick the box which you think gives the correct answer.

a) It has been estimated that the mother tongues of children in London schools number:

| | |
|---|---|
| 10 | |
| 50 | |
| 120 | |

b) Black people came to Britain as early as the:

| | |
|---|---|
| 17th century | |
| 16th century | |
| 18th century | |

c) The population in Britain of those with New Commonwealth or Pakistani ethnic origin (eg those born in or from, all Commonwealth countries except Australia, Canada and New Zealand, and who are not of UK descent) formed, in mid-1981 which percentage of the total population of Britain?

| | |
|---|---|
| 1.3% | |
| 4.1% | |
| 6.2% | |

d) Of that population who have New Commonwealth or Pakistani origin, 80% are of:

| | |
|---|---|
| West Indian African or Asian origin | |
| From Cyprus, Malta or Gibraltar | |
| From Hong Kong or South East Asia | |

e) West Indians and Asians make up:

| | |
|---|---|
| 3% | |
| 5% | |
| 10% | |
| 20% | |
| 26% | |

of the total population of Great Britain.

There are thought to be one hundred and twenty mother tongues amongst children in London schools. Black people came to Britain as early as the sixteenth century. In 1981 those from New Commonwealth or Pakistani origin totalled 4.1% of the total population of Britain and of these 80% were of West Indian, African or Asian origin. West Indians and Asians make up 3% of the total population of Great Britain.

Because of its long tradition of taking in immigrants and refugees, and because it is the "Mother Country" in a multi-racial Commonwealth, Britain now contains many different racial minorities. As we have seen in the answers to the last activity, even the biggest of these minorities is still a very small part of our total population, yet they endure problems out of all proportion to their size.

On the whole, relations between racial minorities and the rest of the Community are good. Nevertheless, members of those minorities - most especially coloured groups - suffer great social and other disadvantages. Many live in areas where there are acute housing and educational problems, and high rates of unemployment. A survey published in June 1985 showed that, in spite of major social programmes and legislation, inequality of treatment and opportunity continues, most of all in employment: discrimination is particularly bad in selection and a black person is far more likely than a white to fail to get a job. Work that is offered tends to be of the most low-level and poorly paid kind and chances of promotion are poor too - not least because of language or other cultural problems, that many firms' education and training programmes make little if any attempt to deal with.

It is clear that, in Britain today, racial minorities suffer from inequality of treatment in employment because they:

ARE UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN OTHERS ARE, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION

## 3 What the law aims to achieve

We can see from what we've read so far that certain groups in our society suffer particularly severely from inequality at work. Let's remind ourselves of that point and of a few others that we have covered in earlier sections.

**SELF CHECK 2**
**Time guide**
**4 mins**

Complete the following sentences with a suitable word or group of words.

a) Equality of treatment is important in order to encourage _____ relationships in the workplace, and to make sure the best use is made of everyone's _____.

b) The law consists of _____ which apply across all society, in order to help society _____ and _____.

c) The law aims to protect not only society as a whole but also those who are treated _____ within it.

d) Two of the most disadvantaged groups in British society in the field of employment are _____ and _____ _____

---

The answer to this self check is here in the following words, so you'll have to check your answers carefully. a) You may have used a word like 'harmonious' or 'good' to describe the sort of relationships which equality of treatment would encourage. Equality of treatment also aims to ensure that the best use is made of everyone's abilities or talents. b) The law is a set of rules which are set up in order for society to survive and prosper. c) As well as protecting society as a whole, the law also aims to protect those who are treated unfavourably within society. d) Two of the most disadvantaged groups are women and racial minorities.

If we think about these four statements that we've just completed, we can perhaps see clearly why it has been found necessary for the law to step in and try to help women and racial minorities in employment.

* Without full equality of treatment and opportunity in employment many people's talents and potential will be wasted, and bitterness and conflict will grow.

* Unless there is harmony in society, and everyone's talents and potential are used to the full, society's growth and prosperity will suffer.

* The law must help those who suffer severely from inequality in employment, in order to benefit both them and society as a whole.

So, in answer to our question "What does the law on equality aim to achieve?" we can say:

* THE LAW AIMS TO GET RID OF INEQUALITY IN EMPLOYMENT IN ORDER TO ACHIEVE HARMONY AND THE FULL USE OF EVERYONE'S ABILITIES

* THE LAW IS PARTICULARLY CONCERNED TO HELP WOMEN AND RACIAL MINORITIES SINCE THEY SUFFER PARTICULARLY SEVERE DISADVANTAGES IN EMPLOYMENT

## 4 What the law says

The law relating to equality in employment is quite complex, but as a supervisor you are not expected to be a lawyer. Your concern is simply to know the supervisor's legal responsibilities, and how to keep the law.

Basically, as a supervisor you will be keeping the law on equality if it can be shown that in matters relating to employment for which you are responsible, no-one:

**IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN OTHERS ARE, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

This means that, in legal terms, there must be no unlawful discrimination in the workplace, either by you or anyone to whom, or for whom, you are responsible.

### 4.1 Discrimination at work

Discrimination is simply the laws way of describing 'Inequality of treatment'; so unlawful discrimination means a situation where someone

**IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN OTHERS ARE, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION**

There are seven grounds on which discrimination at work is unlawful. Some of them are quite well-known.

---

ACTIVITY 12
Time guide
2 mins

Jot down two of the grounds on which you think discrimination at work is unlawful.

* _____

* _____

---

The seven grounds on which discrimination can be unlawful are:

* Sex
* Marriage
* Race
* Colour
* Nationality
* Ethnic origins
* National origins

So no-one may be unjustifiably treated in a less favourable way than others because, in a particular situation, they are female - or male (the law applies equally to both sexes); or are married; or are of a particular race, colour, or nationality, or have particular ethnic or national origins.

What the law actually says about unlawful discrimination is contained mainly in four pieces of legislation. There is no need to memorise them - as we will see in Part C, there are special aids available for anyone needing help on legal matters. Here they are:

| LAW | AIM |
|---|---|
| Sex Discrimination Act 1975 | To get rid of discrimination in employment on grounds relating to sex or marital status |
| Race Relations Act 1976 (replaces an Act 1968) | To get rid of discrimination in employment on grounds related to race or nationality |
| Equal Pay Act, 1970 (amended in 1983) | To ensure that men and women in a particular workplace receive equal pay for the same or similar work, or work of equal value |
| Employment Protection Consolidation Act 1978 and 1980 amendments | To give pregnant women or those on or returning from maternity leave certain rights relating to pay and jobs |

Men are given the same protection as women under the first three Acts, and the Equal Pay Act covers everyone, regardless of their sex, whether they are married, their race, colour, nationality or ethnic or national origins.

You will see that the law also helps pregnant women or those with new babies, under the last Act. What the Act does is to establish rights to maternity pay; to protect a woman's right to return to work following maternity leave; and to ensure pregnant women or those returning after maternity leave are not unfairly dismissed. So we can say:

THE LAW ALSO GIVES CERTAIN RIGHTS RELATED TO PREGNANCY AND MATERNITY

SELF CHECK 3
Time guide
5 mins

Now let's summarise what we've learned by trying a self check.

Complete the following statement with a suitable word or group of words.

a) The legal term for inequality of treatment is _____

_____.

b) _____ in employment is unlawful if i i carried out on seven main grounds.

The sevel grounds are * _____

* _____

* _____

* _____

* _____

* _____

* _____

c) The law also gives certain rights related to _____ and _____.

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. a) The legal term for inequality of treatment is unlawful discrimination. b) Discrimination in employment can be unlawful if it is carried on any of seven main grounds: sex, marriage, race, colour, nationality, ethnic or national origins. c) The law also gives certain rights related to pregnancy and maternity.

## 5 Types of unlawful discrimination

We've identified the grounds on which discrimination is unlawful but now we need to look at exactly how discrimination may occur. The law recognises several different types of discrimination and knowing what those are will help you to be more aware of possible cases of unequal treatment in your own workplace.

## 5.1 Direct and indirect discrimination

The law forbids two main types of discrimination

* DIRECT DISCRIMINATION

* INDIRECT DISCRIMINATION

Direct discrimination occurs when someone is treated less favourably than others are, or would be, directly on grounds of their sex, marriage, race, colour, nationality, ethnic or national origins.

You can probably think of instances of direct discrimination, either from your own experience or from the newspapers or from your reading of this unit so far.

But what is indirect discrimination?

ACTIVITY 13
Time guide
3 mins

Jot down how you think you might discriminate indirectly against somebody.

*

You might discriminate indirectly by setting conditions or requirements which are not needed in the job; indirect discrimination would occur if someone can prove that they cannot meet these conditions because of their sex, or racial group, or the fact that they are married; and that they have thereby suffered a disadvantage.

So there must be no discrimination which is directly on one of those seven 'forbidden' grounds: nor should conditions be set or required which many people of a particular sex, or of those who are married or of a particular racial group alone cannot meet.

Let's see if we can spot which kind of unlawful discrimination has occurred in the following cases. Remember:

* discrimination in employment can be unlawful if it is carried out on seven main grounds: sex, marriage, race, colour, nationality, ethnic or national origins

* two major types of discrimination are unlawful: direct and indirect.

ACTIVITY 14
Time guide
5 mins

Here are two case where unlawful discrimination occurred.

What do you think are the grounds and is discrimination direct or indirect?

Case 1 Having failed to be appointed when she applied for a job with the firm six weeks previously, Miss James, a coloured Englishwoman, applied for another vacancy there, and again attended for interview. Right at the start the interviewer said that he saw no point in seeing her again. The discussion became heated, and she called him a bigot. Later that day a white applicant was appointed, and was told by the interviewer that a coloured girl had been interviewed that morning, adding:

> "I cannot understand why an English employer would want to take on a coloured girl when English girls are available."

i) On what grounds was unlawful discrimination carried out by the interviewer?

* _____

ii) Was the discrimination direct or indirect?

* _____

Case 2 In a workforce, an employer made it a condition of promotion to senior grades that employees should have at least ten years' continuous service with the firm. The employer was not able to prove the ten years' service constituted the experience needed for the higher grade of work. Mrs X applied for promotion and was fully qualified for it apart from having given up work for a year or so to take care of her baby. She did not get promotion because of the 10-year service rule, and reported the employer to an Industrial Tribunal for unlawful discrimination.

i) On what groups was unlawful discrimination carried out by the employer?

* _____

ii) Was the discrimination direct or indirect?

* _____

Now let's look at the answers.

Case 1 Discrimination was carried out by the interviewer directly and mainly on grounds of Miss James' colour, so it was unlawful direct discrimination. (In discrimination cases it is the main grounds, not all the grounds, that matter.)

Case 2 Here indirect unlawful discrimination on grounds of sex occurred. The firm set conditions for promotion that were not relevant to the needs of the work; the proportion of women able to comply with these conditions was in practice likely to be considerably smaller than the proportion of men, because many women would have their service interrupted by having or raising children. Mrs X suffered a disadvantage because she could not meet these conditions. If ten years' service had been proved essential to the job, then discrimination would have been lawful because:

DISCRIMINATION IS JUSTIFIABLE WHERE IT IS CARRIED OUT BECAUSE OF THE NEED FOR A GENUINE OCCUPATIONAL QUALIFICATION

Let's look at another example to find out exactly what is meant by a 'Genuine Occupational Qualification'.

A photographer advertised for a black African female model, for a show he was preparing on African female fashion.

There was not unlawful discrimination here, even though the advertisement meant that no male of any non-African racial group could apply, because clearly it was a genuine requirement of the job in this case that only a black African female could model for the photographer. In other words:

* discrimination is justifiable where it is carried out because of the need for a genuine occupational qualification.

ACTIVITY 15
Time guide
5 mins

Look at some more cases. There is discrimination in each - but is it lawful because of a GOQ (genuine occupational qualification) or unlawful?

Case 1 A store advertised for a female lavatory attendant to look after the 'Ladies Room'. Was the discrimination in favour of females

| | |
|---|---|
| Lawful?(GOQ) | |
| Unlawful? | |

Case 2 A bus company refused to recruit female drivers because they said females would not have the physical strength needed to drive and manoeuvre buses. Was this discrimination

| | |
|---|---|
| Lawful?(GOQ) | |
| Unlawful? | |

Case 3 A boy's boarding school advertised for a Housemaster, specifying men only could apply. Was this discrimination

| | |
|---|---|
| Lawful?(GOQ) | |
| Unlawful? | |

Case 4 A firm advertised for an engineer to work in a Muslim country, and specified that only men could apply. Was this discrimination

| | |
|---|---|
| Lawful?(GOQ) | |
| Unlawful? | |

Case 5 A Chinese restaurant famous for its Chinese food and authentic Chinese setting advertised for a waiter. Only Chinese men or women could apply. Was this discrimination

| | |
|---|---|
| Lawful?(GOQ) | |
| Unlawful? | |

Case 1 was lawful discrimination; it is reasonable to expect that, on grounds of privacy and decency, only women should be attendants in ladies lavatories, so there was a genuine occupational qualification here.

Case 2 Here, however, there was unlawful discrimination, because women are as likely as men to have the strength needed for a bus-driver's job. Strength and stamina are very rarely 'genuine occupational qualifications' justifying sexual discrimination in employment.

Case 3 was lawful discrimination - like Case 1, it was reasonable to argue that, in a boy's boarding school, men were best qualified to hold a job which was so directly involved with the welfare of young boys. If the job had been one of teacher or secretary in the same school, however, then it would have been impossible to argue a similar case for a genuine occupational qualification.

Case 4 was also lawful discrimination because the laws and customs of Muslim countries make it impossible for such work to be done by a woman. Again, there is a genuine occupational qualification.

Case 5 Again, lawful discrimination because in order to have an "Authentic Chinese Setting", Chinese waiters were obviously necessary - so being Chinese was a genuine occupational qualification.

In each of these cases the same point emerges:

DISCRIMINATION IS LAWFUL WHERE IT IS CARRIED OUT BECAUSE OF THE NEED FOR A GENUINE OCCUPATIONAL QUALIFICATION

But the law treats each case individually, so that every case has to be argued and proved without reference to any other. By this we mean that:

GENUINE OCCUPATIONAL QUALIFICATION IS NOT AN AUTOMATIC EXCEPTION FOR VARIOUS TYPES OF JOBS. IT MUST BE SHOWN TO APPLY TO THE PARTICULAR JOB IN QUESTION.

Let's try another case now. This time we'll start by establishing whether or not inequality of treatment has occurred, by using our 4-point checklist. Remember:

INEQUALITY OCCURS WHEN A PERSON OR GROUP IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION

* A 4-POINT CHECKLIST

FACTS

DIFFERENCE IN TREATMENT

DISADVANTAGE

JUSTIFICATION

If you can't quite remember the checklist, turn back to Part A and go through the Checklist again before doing this Activity.

---

ACTIVITY 16
Time guide
5 mins

Ten people apply for a job as a receptionist at a large company. Four have equally good qualifications and experience. One of them is black. The Personnel Officer asks the three white applicants for an interview, but not the black applicant. She says later that she did not interview the black applicant mainly because she didn't think a black person would fit into the job.

(1) What are the FACTS?

Jot down any more facts you feel you need about the case before you can decide whether there has been inequality of treatment here.

* _____
* _____
* _____
* _____

---

I expect you have written down the sort of questions shown in the list below.

* Did the Personnel Officer give any strong justification for her statement that a black person would not fit into the job?
* Has the company appointed black people for this kind of job before?
* Why were the other six applicants not shortlisted? Were any of them black?

Here are the answers to these questions - as you can see, they give us a much clearer idea of this particular case.

Ten people apply for a job as a receptionist at a large company. Four have equally good qualifications and experience. The other six are not qualified for the job (four of them are white, and two are coloured). Of the four good applicants, three are white and one is black. The Personnel Officer asks the three white applicants to an interview, but not the black applicant. She says later that she did not interview the black applicant mainly because she didn't think a black person would fit into the job. She cannot explain her attitude - it is just a feeling she has. She has never appointed a black person for this kind of job before.

---

ACTIVITY 17
Time guide
5 mins

Now that we have the facts before us, we can apply the other questions on our checklist.

b) DIFFERENCE IN TREATMENT

Who, if anyone, has received difference in treatment?

* _____

c) DISADVANTAGE

What, if any disadvantage has occurred as a result of any difference in treatment?

* _____

_____

d) JUSTIFICATION

What, if any, strong justification exists for any unfavourable treatment?

* _____

_____

Finally, did inequality of treatment occur in this case?

YES/NO

---

Studying the facts does show that the well-qualified black applicant was treated differently from the other well-qualified applicants, and that she did suffer a disadvantage - she was not given an interview. There has been no real justification given for treating the black applicant in this way - just a vague feeling about coloured people not being likely to fit in. Therefore inequality of treatment did occur in this case.

---

ACTIVITY 18
Time guide
5 mins

In fact inequality of treatment was found to have occurred in this case. But did it break the law? And if so, how?

Check the facts of this case again carefully and then see if you an answer these final questions on this case.

We now know that unfavourable discrimination occurred in this case, but:

a) Was the discrimination direct or indirect?

* _____

b) On what grounds was the discrimination carried out?

* _____

c) Was there a genuine occupational qualification which the interviewer could argue as a reason for discrimination in this case?

YES/NO

---

The discrimination was unfavourable because the applicant suffered a disadvantage; was direct, because the Personnel Officer refused to interview the applicant; it was as the interviewer admitted, discrimination mainly on grounds of the applicant's colour; and there was nothing to show that being white was a genuine occupational qualification for the job in question. So there has been:

* direct unfavourable discrimination

* on grounds of colour

* with no genuine occupational qualification involved.

Therefore the discrimination was unlawful.

Let us look back on what we have learned so far about types of discrimination at work forbidden by law:

* THE LAW FORBIDS TWO MAJOR TYPES OF UNFAVOURABLE DISCRIMINATION IN RELATION TO EMPLOYMENT - DIRECT AND INDIRECT

* WHAT MATTERS IN DISCRIMINATION CASES IS NOT ALL THE REASONS FOR DISCRIMINATION, BUT THE MAIN REASONS

* DISCRIMINATION IS JUSTIFIABLE WHERE IT IS CARRIED OUT BECAUSE OF THE NEED FOR A GENUINE OCCUPATIONAL QUALIFICATION (GOQ)

* GOQ IS NOT AN AUTOMATIC EXCEPTION FOR VARIOUS TYPES OF JOBS. IT MUST BE SHOWN TO APPLY TO THE PARTICULAR JOB IN QUESTION

## 5.2 Victimisation, pressure and instruction to discriminate

The law goes further than forbidding:

* Direct discrimination

* Indirect discrimination

It also forbids:

* victimisation

* pressure to discriminate by an employer or anyone else

* instruction to discriminate

* segregation

Let's see what each of these means first and then look at some cases where these four kinds of discrimination occur.

* Victimisation

  treating someone unfavourably because they have, truthfully and in good faith, reported or alleged unlawful discrimination, or given information or evidence in a discrimination case

* Pressure to discriminate

  occurs where one person or group puts pressure on another to discriminate unlawfully, even if discrimination does not actually take place (eg a union threatening an employer with a strike)

* Instruction to discriminate

occurs where someone uses their position to order unlawful discrimination to be carried out (even if such discrimination does not actually take place) or when someone obeys such instructions.

* Segregation

of people on racial grounds so that they have to work together is unlawful if it is deliberate, resulting from company policy and acts.

ACTIVITY 19
Time guide
8 mins

Check these four definitions again carefully and then have a look at the following cases.

In each one, unlawful discrimination has occurred - possibly of more than one kind.

You are just looking for instances of

* victimisation
* pressure to discriminate
* instruction to discriminate
* segregation

Case 1 A West Indian skilled fitter applied for a job with a large motor manufacturing company. He was well qualified for the job, and management wished to appoint him. Both the company and the trade union had a policy of equal opportunities for all workers regardless of colour, race, sex or creed.

All the other workers in the section where the job was located were white. A union meeting was held, and a resolution was passed that the white workers would not work with a black person. The two shop stewards told management, who then decided not to appoint the black applicant. One white worker disagreed with the union's action, and reported the case. It was subsequently found at the Industrial Tribunal, that unlawful discrimination had occurred. Thereafter the white worker was "sent to Coventry" by his co-workers and found that he was given no opportunities for overtime, even though before all this happened he used to do several hours overtime a week.

Apart from the direct discrimination that occurred in this case, against the West Indian on grounds of his colour, what other kinds of unlawful discrimination occurred?

Victimisation _____
Pressure _____
Instruction _____
Segregation _____

Case 2 A manager of an amusement centre was dismissed for refusing his employer's instruction not to admit young black people. What kind of unlawful discrimination occurred here?

Victimisation _____
Pressure _____
Instruction _____
Segregation _____

Case 3 A Personnel Officer was told by his employers to restrict the number of Asian employees in the manual workforce. He obeyed, even though being non-Asian was not a genuine occupational qualification for the type of manual work in question.

What kinds of unlawful discrimination occurred here, apart from direct discrimination against Asians on grounds of race?

Victimisation _____
Pressure _____
Instruction _____
Segregation _____

---

Now let's look at the judgement that was reached in these cases.

Case 1 is our friend from Part A, the West Indian fitter. Two other kinds of discrimination occurred here:

* Pressure to discriminate - by the Union

* Vicitimisation - of the white worker, because he reported the case, when he did so truthfully and in good faith.

Case 2 Even though there has been no discrimination on grounds of anyone's sex, marriage, or racial origins, nevertheless there has been an offence relating to discrimination - that of:

* Instruction (by the employer) to discriminate

The manager successfully claimed unfair dismissal because he had been dismissed for refusing to obey his employer's unlawful instruction to commit an act which would have been one of racial discrimination.

Case 3 Here again the offence has been committed of:

* Instruction to discriminate

Two parties broke the law - the employers, for giving that unlawful instruction, and the Personnel Officer, for obeying it and thereby actually breaking the law.

An important point emerges from looking at this last case:

WHERE WORKPLACE RULES OR CUSTOM CONFLICT WITH THE LAW, IT IS THE LAW THAT MUST BE OBEYED

In these three cases we can see examples of another point:

PRESSURE OR INSTRUCTION TO DISCRIMINATE ARE NO EXCUSE FOR UNLAWFUL DISCRIMINATION

We also see that:

PRESSURE OR INSTRUCTION TO DISCRIMINATE UNLAWFULLY ARE OFFENCES, EVEN IF NO DISCRIMINATION ACTUALLY TAKES PLACE

Finally we see that

A SINGLE DISCRIMINATION CASE CAN INVOLVE SEVERAL DISCRIMINATION OFFENCES AND MORE THAN ONE GUILTY PARTY

We'll try one last case before summarising this section of Part B.

---

SELF CHECK 4
Time guide
10 mins

An employer made it clear to his Personnel Officer that no female employee was to be appointed in a certain section because

"Old Bill Bloggs is manager there and he's hopeless with women - it will cause more trouble than it's worth."

There was not other reason why the employer thought females should not be appointed. Bill Bloggs had not been consulted.

Here's a chart showing the various types of discrimination we have looked at. Think about each one and decide whether or not each one has been committed. If you feel that a certain offence (direct discrimination, for instance) has been committed then decide who it has been committed by and fill it on the table as well.

| OFFENCE | YES/NO | COMMITTED BY |
|---|---|---|
| Direct discrimination | | |
| Pressure to discriminate | | |
| Victimisation | | |
| Instruction to discriminate | | |
| Indirect discrimination | | |
| Segregation | | |

---

I hope you've decided that direct discrimination on the grounds of sex was carried out by the Personnel Officer. There was no victimisation nor indirect discrimination nor segregation so that leaves us with 'pressure to discriminate' and 'instruction to discriminate'. Did either of these occur? The answer is that the offence 'instruction to discriminate' took place and it was carried out by the employer, who made it clear that the Personnel Officer must not appoint a female, and by the Personnel Officer, who obeyed an unlawful instruction.

You may well have thought that the employer was also guilty of 'pressure to discriminate' but there's an important distinction which makes it clear that it was 'instruction to discriminate' of which the employer was guilty.

That distinction is that anyone at all can be guilty of pressure to discriminate if by any means whatsoever, they put pressure on someone else. However, the offence of instruction to discriminate occurs only when a formal order to discriminate (or something which will clearly be understood as an order, as happened in this case) is given by somebody in a position to do so.

Now let's summarise what we've learned in this section. In addition to direct and indirect discrimination:

* The law also forbids victimisation, pressure or instruction to discriminate and segregation

* pressure or instruction to discriminate are no excuse for unlawful discrimination

* Pressure or instruction to discriminate unlawfully are offences, even if no discrimination actually takes place

* A single discrimination case can involve several discriminatory offences, and more than one guilty party

## 5.3 Positive Action

There is one more important point to make when we talk about types of discrimination and the law. It concerns what is called:

POSITIVE ACTION

Sometimes we may want, and need to treat some people in a different way than others in order to put right the effects of past inequalities or treatment - in other words, we want positively to help them. But if we do so, are we not discriminating against everyone else by not giving them extra help too? The law helps us out here by saying that in certain respects such positive action, aimed at reversing the effects of past inequalities, is allowable. In general terms

* the law allows positive action to help certain disadvantaged groups to 'catch up' with the experience and qualifications of others

* such positive action is allowed in relation to providing certain special training and other facilities and services but not in recruitment, selection or promotion.

So the law says that, in certain ways, special help may be given to those who have suffered, or otherwise would suffer, disadvantages in employment because of their:

Sex

Marriage

Race

Colour

Nationality

Ethnic or national origins

But such positive 'action' can never be given in recruitment or promotion situations, since to do so would be to directly discriminate against all other applicants to their disadvantage.

Now see whether you can decide whether the positive action that occurs in the next two cases is lawful or unlawful. Remember:

* positive action is allowed in relation to providing certain training or other facilities and services

* positive action is not allowed if it treats one person or group more favourably than others in recruitment, selection or promotion

ACTIVITY 20
Time guide
4 mins

Read these three cases carefully, and decide whether lawful or unlawful POSITIVE ACTION has occurred in each.

Case 1 A firm with a workforce containing a group of Muslim workers provided them with special facilities for ritual washing and communal prayer, and allowed them time off to attend the mosque. Was this lawful or unlawful positive action?

LAWFUL/UNLAWFUL

Case 2 A local authority provided a creche for the use of employees with small children, in order to encourage women with small children to apply for and stay in jobs for which they had the skills.

Was this lawful or unlawful positive action?

LAWFUL/UNLAWFUL

Case 3 The Safe Women's Transport Collective, which provides cheap, safe transport for women and children at night in the borough of Lewisham, advertised for a black or white driver, but everyone who asked for an application form was told that only black women would be considered. A white woman nevertheless applied, but was not appointed, even though she met all the job requirements other than colour. The Administrator for the 6-woman collective said that they had wanted to advertise openly for a black woman, but had been told by the South London Press that the advertisement must include the words 'black or white'. They had therefore advertised accordingly, but openly explained to applicants that they wanted only black women. She said

"We thought it was unfair to build up people's hopes and at the end of the day not take them on."

And also said:

"We thought we were acting in line with positive discrimination . . . in that area, which put black women at a disadvantage in trying to get jobs."

Was this lawful or unlawful positive action?

LAWFUL/UNLAWFUL

The first two cases both involved lawful positive action because the special measures prevented particular racial or sexual groups from suffering difficulties that would have held them back in seeking or keeping jobs.

The third case is more difficult, the Collective's Administrator acted in good faith, to help a group - black women - who did suffer inequality of treatment in relation to obtaining work. Nevertheless, it was found that unlawful positive action had occurred, because the action related to recruitment, and it gave one group special advantages whilst discriminating against others (white applicants). Ignorance of the law was no excuse for the offence.

So we can sum up by saying:

* The law allows positive action to help certain groups to 'catch up' with the experience and qualifications of others.

* Such positive action is allowed in relation to providing certain special training or other facilities and services.

* Positive action is not allowed if it treats a person or group more favourably than others in recruitment, selection or promotion.

* Ignorance of the law is no excuse when a discriminatory offence has been committed.

## 6 Deciding whether the law has been broken

We have spent quite a time learning what the law on equality aims to achieve; what it says about discrimination and what is unlawful. It would hardly be surprising if, by now, you are wondering how to remember it all! Well, first of all you don't have to remember it - there are some easily available aids, which we'll talk about in Part C, to help you when you need to check on the law and how to meet its requirements.

Secondly, we can develop a 5-point Checklist to help us to decide fairly accurately whether there has been unlawful discrimination in a particular situation, and if so, what type or types of offence have been committed, and by whom. Here it is:

* Grounds for discrimination
* Types of discrimination
* GOQ
* Positive action
* Offender/s

SELF CHECK 5
Time guide
8 mins

a) There are seven grounds for discrimination. Jot down as many as you can remember.

* _____
* _____
* _____
* _____
* _____
* _____
* _____

b) There are six types of unlawful discrimination. Jot down as many as you can remember.

* _____
* _____
* _____
* _____
* _____
* _____

c) What do the initials GOQ stand for?

* _____

d) What is positive action?

* _____
* _____

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. a) The seven grounds for discrimination are sex, marriage, race, colour, nationality, ethnic or national origins. b) The six types of unlawful discrimination are direct or indirect, victimisation, pressure or instruction to discriminate and segregation c) GOQ means genuine occupational qualification d) positive action is action to help certain groups to catch up with the experience and qualifications of others. It's allowed in relation to providing certain special training and facilities and services, but not in relation to job recruitment, selection or promotion.

So now we've checked what the items on the checklist mean, let's try it on another case.

> Terry was born in the West Indies. He applied to a firm for an apprenticeship, and had to do various tests and interviews, all of which were designed to show whether applicants had the skills and knowledge needed in the job. All candidates took the same tests and interviews, but Terry failed to do himself justice (going by his record of educational achievement to date) and so did not get an apprenticeship. In the case of the other failed candidates there was very clear evidence to show that they had no potential to be apprentices. However, in Terry's case the company believed that his poor performance was probably because he came from a different cultural background, and so would find not only the interviews and tests required, but also much in a British apprenticeship programme, difficult to perform well in. With alternative training, however, they believed he had the potential to qualify in a trade. They therefore offered him alternative training, and in due course, having obtained City and Guilds and Industrial Training Board Certificates, Terry became a qualified craft fitter and obtained a permanent post with the company.

Now we have to ask ourselves:

Has any unlawful discrimination occurred?

If so, of what type?

We developed in PART A

* FACTS
* DIFFERENCE
* DISADVANTAGES
* JUSTIFICATION

Let's assume, having used the 4-point checklist, you have established that these are all the relevant facts and that, studying them, there may have been difference of treatment of Terry (unlike other candidates who failed, he was given alternative training), but no-one suffered a disadvantage from that and it seemed to have a justification. But was it a strong enough justification? Can we be sure no inequality that was unlawful occurred? Let's try to use our 5-point checklist to find out whether or not unlawful discrimination has occurred.

ACTIVITY 21
Time guide
8 mins

Here's the checklist again:

* GROUNDS
* TYPE
* GOQ
* POSITIVE
* OFFENDER/S

Use it to help you answer the following questions about Terry's case.

a) GROUNDS?

If any discrimination - difference in treatment - has occurred, was it mainly on one of the seven 'forbidden' grounds: sex, marriage, race, colour, nationality, ethnic or national origins?

* _____

b) TYPE?

If any discrimination has occurred, was it on one or more of the six unlawful types: direct, indirect, victimisation, pressure, instruction to discriminate or segregation?

* _____
* _____

c) GOQ?

If any discrimination has occurred, was it because of the need for a genuine occupational qualification?

* _____

d) POSTIVE?

If any discrimination has occurred, was it lawful or unlawful positive action?

* _____

e) OFFENDER/S?

If the law has been broken, who are the offenders?

* _____
* _____

Check your answers with these findings.

a) If Terry was treated differently from other failed applicants, then it seems to have been on grounds of his ethnic origins: we're told that the company recognised that his poor performance when applying for apprenticeship was probably because he came from "a different cultural background".

b) The company required interviews and tests for all applicants for an apprenticeship, and then admitted that one person - Terry - probably could not perform well on them because of his "different cultural background". So it looks as if there may have been indirect discrimination: Terry, or anyone like him, could not meet the conditions set, because of his ethnic origins, and Terry did suffer a disadvantage because of this.

c) But the interviews and selection tests were related only to skills and knowledge required to do the training and work of an apprentice. So they did form a genuine occupational qualification. Therefore, there has been no unlawful discrimination here.

d) Was there positive action? Yes - because Terry was given positive help to enable him to "catch up" with the experience and qualifications of others without his cultural disadvantages. And the law allows this, because he was given training; had he been given positive help at the selection stage, that would not have been lawful. So at last we have found the answer to the question that bothered us from the start of this case - there did seem to be some difference in the way Terry was treated compared to the other unsuccessful candidates; but was there a strong enough justification for it to make that "discrimination" lawful. Yes, because the law allows positive action in relation to the provision of certain training facilities, and evidence pointed strongly to the fact that Terry had ability, but was held back by cultural disadvantages.

e) There was no offence under discrimination law, so there were no offenders!

Did you notice how, once our 4-point checklist has indicated to us whether there has or has not been any inequality of treatment, this 5-point checklist enables us to decide whether any inequality is unlawful or not, by checking out all the main possibilities relating to the law on equality in employment? Let's try one more case.

In this case, we will assume that use of our 4-point checklist has established that we have the main facts before us, and that inequalities of treatment of Asian workers have occurred - although we are not sure whether or not any "strong justification" exists for them. Try your 5-point checklist to indicate whether or not the inequalities of treatment are in fact unlawful, and if so, who are the offenders.

SELF CHECK 6
Time guide
15 mins

Read the following case, and then answer the questions that follow.

Between June 1977 and December 1979 'X' City Metro had various requirements for promotion to inspector posts. One of them was a test involving written English skills, which the Personnel Officer, on instruction from top management, administered to all applicants. The skills were not related to good performance in the grade, and were a real obstacle for the majority of Asians for whom English was not their mother tongue.

Management said it was essential that Asian applicants were seen to be of "unquestionably high quality" in order to avoid the "backlash" they felt might occur from the white workers who probably wouldn't want Asians to get promotion. (There was no proof such a backlash would occur).

In fact, very few Asians got promotion. In October 1979 Asians made up 48% of the Metro workforce. Although many were well qualified in terms of the abilities actually needed in an inspector job, only one was an inspector. There were 50 inspector posts at Metro.

Read the case very carefully. Then use your checklist:

a) GROUNDS?

If any discrimination has occurred, was it on one or more of the seven 'forbidden' grounds? If so, which?

* _____

b) TYPE?

If any discrimination has occurred, was it on one or more of the six unlawful types? If so, which?

* _____

* _____

c) GOQ?

If any discrimination has occurred, was any GOQ involved? If so, which?

* _____

d) POSITIVE?

Has any positive action, lawful or unlawful, been taken?

* _____

e) OFFENDER/S?

If the law has been broken, who are the offenders?

* _____

* _____

_____

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. This is based on a true case, where the investigators took five years to uncover all the facts. Here are the answers to our questions. a) Discrimination on grounds of race occurred. Asians were clearly treated differently, and to their disadvantage: the greater problems they faced in the test led to their failure, time after time, to get promotion. b) The discrimination was indirect. The test was a requirement for everyone, but it was of a kind that would be bound to create problems for a greater proportion of Asian than of English workers. Instruction to discriminate was given by top management, in requiring the Personnel Officer to administer a test which would indirectly discriminate against Asians. The Personnel Officer also committed an unlawful act in obeying this instruction to discriminate. c) No GOQ was shown for the test. The only justification given by management was the need to avoid a "backlash" (and this was only an assumption). d) No - no action was taken to help the disadvantaged group (although since this case, special training has been given to them). e) The offenders, as we have seen, were top management and the Personnel Officer. The 'employer' was liable too - but to find out why you will have to wait until Part C!

As I said this was a very difficult case and you've done well if you have identified some of the types of discrimination involved. If you did and you can follow the reasoning for the judgement we've just looked at then you should feel fairly confident that you've grasped the main points about the law on equality at work.

## 7 Summary

* The law aims to get rid of inequality at work and to protect women and racial minorities because of the disadvantages many of them suffer in employment.

* You may be personally liable if the law on equality is broken in your workplace by you or by someone you supervise.

* The main grounds on which unfavourable discrimination may be unlawful are:

  sex

  marriage

  race

  colour

  nationality

  ethnic or national origins

* Discrimination can be:

  direct

  indirect

  victimisation

  pressure or instruction to discriminate

  segregation

* Discrimination is lawful where it is carried out because of the need for a genuine occupational qualification.

* Positive action is lawful where it helps disadvantaged people in relation to employment, but only in relation to certain special training or other facilities or services, not in relation to recruitment, selection or promotion.

* Ignorance of the law is no excuse in a case of unlawful discrimination: nor is the fact that someone was responding to pressure or instruction on them to discriminate.

* Checklist for unlawful discrimination:

  GROUNDS

  TYPE

  GOQ

  POSITIVE

  OFFENDER/S

## PART C ACHIEVING EQUALITY IN THE WORKPLACE

### 1 Introduction

So now we know what equalty and inequality at work are and the main grounds on which the law would judge cases of discrimination. Let's now turn to our third question:

What should you do to achieve equality of treatment and opportunity in the workplace?

To answer this we need to consider two things:

* Carrying out practices that will ensure there is no unlawful discrimination in the workplace

* Making the workplace somewhere where everyone really cares about equality, and shows this in their attitudes, behaviour, and daily treatment of one another.

### 2 Preventing unlawful discrimination

As we have already seen in Part B, supervisors must always be sure that they do not break the law relating to equality. They must also avoid helping anyone else to commit an unlawful act, because:

* ANYONE WHO KNOWINGLY AIDS ANOTHER TO COMMIT AN UNLAWFUL ACT OF DISCRIMINATION WILL SHARE LIABILITY FOR THAT ACT

EXTENSIONS 1 and 5 Pages 79 and 86

Legal liability can involve serious penalties, including having to pay up to £8,000 in compensation. (There is fuller information about penalties for discrminatory offences in these extensions.)

Liability can be of two kinds -

* individual

* vicarious

Vicarious liability simply means that whoever is finally responsible for individuals who commit unlawful acts also has responsibility for those acts.

---

ACTIVITY 22 Time guide 2 mins

If whoever is finally responsible for individuals who commit unlawful acts is also vicariously liable, what does this mean in the workplace? Suppose somebody clearly commits an act of discrimination at work.

Who else do you think will be liable for the offence?

* _____

_____

_____

I hope we can agree that the employer will be vicariously liable since he is finally responsible for what the employee does.

* THE EMPLOYER AS WELL AS THE INDIVIDUAL EMPLOYEE IS LIABLE FOR ANY UNLAWFUL ACT OF DISCRIMINATION DONE BY THE EMPLOYEE, UNLESS IT CAN BE SHOWN THAT THE EMPLOYER HAS TAKEN ALL REASONABLE PRACTICAL STEPS TO PREVENT DISCRIMINATION OCCURRING

The supervisor has an important responsibility here:

If, in a particular case, the supervisor cannot prove that reasonable steps have been taken in their workplace TO PREVENT DISCRIMINATION OCCURRING, then the employer's chances of escaping 'vicarious liability' are slight.

Let us look at a case now, to test out these ideas. Remember:

* Supervisors must not carry out any unlawful discrimination. If they do, they will be legally liable for it as individuals.

* Supervisors must not knowingly help anyone else to carry out unlawful discrimination. If they do, they will share individual legal liability for it.

* If an employee commits an act of unlawful discrimination and their supervisor cannot prove that, in the superviosr's workplace, all reasonable practical steps were taken to prevent discrimination occurring, the employer as well as the individual employee will usually carry legal liability for that act.

ACTIVITY 23
Time guide
5 mins

Here's a case of unlawful discrimination. When you've read it, decide who you think is liable.

In a workplace, a group of white workers regularly taunted and jeered at a coloured worker, making his life miserable in many ways. The supervisor never seemed to notice anything, and when, eventually, the coloured worker complained to him about this treatment the supervisor said:

"You must be imagining it - I know the men; they like a laugh, but that's all there is to it. I've never seen anything going on. You don't want to be too sensitive about these things, you know."

Eventually the worker left the company, unable to stand the harassment any longer. He then took a case of discrimination to an Industrial Tribunal. During the case it was established that:

* there was a high turnover of coloured workers in the workteams in that section, but no information was available as to why they had left.

* the company had no policies or procedures to prevent discrimination occurring; no training or guidance relating to equality at work was given to supervisors; and abusive behaviour of the kind complained of by the coloured worker was not a matter for discipline in the company.

The Tribunal found that direct discrimination on grounds of colour had occurred. Who do you think was liable?

| | |
|---|---|
| The white workers | YES/NO |
| The supervisor | YES/NO |
| The employer | YES/NO |

The answer in this case is that the white workers and the employer share liability. The workers are individually liable because they directly discriminated against the coloured worker. Do you remember our earlier definition of inequality of treatment?

* INEQUALITY OCCURS WHEN A PERSON OR GROUP IS UNJUSTIFIABLY TREATED IN A LESS FAVOURABLE WAY THAN ANOTHER IS, OR WOULD BE, TREATED IN THE SAME SORT OF SITUATION

No white worker was, or would have been, treated in the same unfavourable way as the coloured wokrer was treated, resulting in his resignation.

The employer is (vicariously) liable too, because the company took no practical steps to make sure that everyone - including supervisors - knew and carried out the requirements of the law relating to equality, or to prevent unlawful discrimination.

But what about the supervisor?

You may have been unsure whether he had any liability, and you would be quite right: the position of the supervisor is uncertain, and the Tribunal might have decided either way. If the Tribunal decided that he did not knowingly aid the workers in their discrimination against the coloured worker, and that they were so careful not to be caught out that most supervisors would have realised what was going on, then the Tribunal would probably decide this supervisor had no liability. On the other hand:

IGNORANCE OF THE LAW IS
NO EXCUSE WHEN A DISCRIMINATORY
OFFENCE HAS BEEN COMMITTED

So the supervisor must be able to prove that he really was unaware that the men were taunting and jeering at the coloured worker until he eventually left, and that he in no way helped them in their treatment of that worker. If it emerges that he know about and helped in the treatment, then even if he did not know the treatment was unlawful, the tribunal would still find him liable.

IGNORANCE OF THE LAW IS
NO EXCUSE WHEN A DISCRIMINATORY
OFFENCE HAS BEEN COMMITTED

Whatever the outcome, the supervisor certainly didn't help matters for his employer. He could not show that, in his own workplace, all reasonable practical steps had been taken to prevent discrimination, and this will have told against his employer during the case.

---

ACTIVITY 24
Time guide
3 mins

Jot down one way in which you think the supervisor could have helped to show that the employer generally took reasonable practical steps to prevent discrimination.

* _____

* _____

---

You may have thought of various things he could have done, but I would say that there is one which is more important than any others.

* He should have kept records, particularly of why people had previously left and of any situations which involved possible discrimination and what had been done to prevent discrimination occurring

So this case shows us one more vital point:

* RECORDS AND UP-TO-DATE INFORMATION SHOULD ALWAYS BE AVAILABLE TO SHOW EXACTLY WHAT STEPS HAVE BEEN TAKEN TO PREVENT DISCRIMINATION IN THE WORKPLACE, AND TO PROVE HOW PEOPLE HAVE BEEN TREATED AT WORK

Setting up adequate records, keeping them up to date, and using them to monitor and anaylse personnel processes is not only 'good practice' - it is essential if the supervisor is to disprove a complaint made about discrimination, and to help the employer avoid 'vicarious liability' in such a case. Without such records it would be virtually impossible to prove that you had taken reasonable practical steps to prevent discrimination. It would merely be your word against anybody else's. You might reasonably feel that the Personnel department would keep such records. They may well, but informal records of your own, kept with your manager's approval, could be invaluable back-up at the very least and, if Personnel doesn't keep such records, may be the only way the firm can prove that it has taken reasonable practical steps to prevent discrimination. Detailed information to help you here is contained in this extension.

EXTENSION 2
page 80

You may have noticed that the words 'reasonable practical steps' keep coming up in this discussion. What they mean is that there should be good procedures and practices covering every personnel process in the workplace, from recruitment to dismissal, so that discrimination cannot happen at any stage.

---

ACTIVITY 25
Time guide
4 mins

'From recruitment to dismissal'. That could describe a lifetime in a job. Think about the stages in a possible 'lifetime' in a job and the sort of things that happen to you during your career. Jot down four stages where you think clear procedures and good practices are likely to be important.

I've filled in a few to get you started.

* Recruitment
* Selection
* _____
* _____
* _____
* _____
* Promotion
* Transfer
* _____
* _____
* _____
* _____
* Dismissal

---

I expect you'll find that the processes you have listed are included in this extended list:

* Recruitment
* Selection
* Induction
* Placement
* Appraisal
* Training
* Promotion/Transfer
* Pay and conditions
* Health and Safety
* Discipline
* Redundancy
* Dismissal

It would be important to have clear procedures and good practices to ensure equality of treatment and opportunity at each of these stages. These are all areas where the individual comes into direct contact with the employer, and where inequality of treatment often occurs.

But how do we ensure that we are treating everybody equally at each of these stages?

The key word is OBJECTIVITY.

OBJECTIVITY means thinking about something without letting your own or anybody else's personal feelings enter into it.

ACTIVITY 26
Time guide
3 mins

We've already agreed the selection of people is a centrally important process. You select people for jobs, for training, for transfer or promotion, for redundancy or dismissal. But how do you do it?

The following chart shows some of the factors you may take into account.

Tick each one according to whether you would consider that factor 'never', 'rarely' or 'possibly' and, if you feel it is relevant, jot down a reason.

| FACTORS | ARE THEY RELEVANT IN ANY SELECTION DECISION YOU MAKE? | | | IF POSSIBLY RELEVANT, EXPLAIN WHY |
|---|---|---|---|---|
| | Never | Rarely | Possibly | |
| 1 Has excellent references | | | | |
| 2 Recommended by one of the workforce | | | | |
| 3 Shares my social interests/ outlook on life/sense of humour | | | | |
| 4 Has a personality which will fit in here | | | | |
| 5 Pleasant appearance | | | | |
| 6 Has a poor job record | | | | |
| 7 English is not too good | | | | |
| 8 Has faced disciplinary action | | | | |

This is one of those activities where almost no-one tells the whole truth! So if you have admitted that, sometimes at least, factors like 3 have influenced your decisions, you deserve quite a few marks for honesty! Of course, there can be no set of 'right' or 'wrong' answers here - only the information you have put in column 3 can determine how far you are objective in a particular situation. However, in most circumstances the following would probably hold true:

* NEVER OR RARELY RELEVANT

  Fact 3 would be hard to justify in most selection decisions. If you have ticked possibly in factor 3, please look again at your reasons: are you sure that they stand the test of 'relevant factors' and of objectivity?

  Factors 2, 4 and 7 should very rarely be relevant to a selection decision. A worker's recommendation may seem to be truthful and objective, but there is so much risk that it will not be. In certain situations it may be made so that certain types of people don't get the job (women, perhaps, or members of certain racial groups). 'Personality fitting in' is such a vague and subjective statement that it needs to be treated with extreme care: of course, if a job involves working under stress in a small, close-knit team, where personality differences could cause real and damaging problems, then personality factors must be looked at - but there needs to be a much more precise explanation of exactly which factors relating to personality are desirable.

* POSSIBLY RELEVANT

  Factor 5 may or may not be relevant to a selection decision - it depends entirely on the needs of the job in question. But it does even then give problems to the selector/s, because who can clearly define the meaning of 'pleasant appearance'?

  Factors 1, 6 and 8 would be relevant to consider in all selection decisions. Excellent references are of course relevant, providing that they are truthful, and that the job done for the referee or the qualities he or she discusses are sufficiently related to the job you are filling now. A poor job record must be looked at, as must the fact that an applicant has faced disciplinary action - but in each case the reasons for the behaviour must be established, because once known they may or may not tell against the applicant.

  As to poor English, there are not many jobs where perfect English is needed. Even those whose poor English is at first hard for others to understand can usually find ways of communicating quite well before long - and language training can help a great deal here.

I expect that when you looked through your answers you also found yourself thinking how often it happens that if we let our personal whims enter into our judgements about people, we are likely to end up favouring those:

* whom we know

* with whom we can communicate easily

* who share our values and attitudes

* whom we feel at once at ease with

* who are like the rest of our workteam in 'personality'

* who we know the rest of our workteam will like

But are any of these factors relevant to a person's ability to do the job? Very rarely. Often they will exclude people of certain groups or types, and they can lead to unlawful discrimination taking place in selection and many other personnel processes.

Did you notice the repeated use of the words 'relevant factors' in the Activity and the response? 'Relevant factors' is the first of five steps we should always take to achieve equality of treatment and opportunity in our personnel processes. Here are all five - they provide us with another 5-point checklist:

RELEVANT FACTORS only should be the basis for decisions at work. They should be clearly expressed, and able to be measured.

PROCEDURES to ensure there is objectivity and equality of treatment should be established, known, agreed and followed by everyone.

TRAINING and guidance should be given in these procedures, to everyone who has to carry them out, and to everyone who will be affected by them. If there is an Equal Opportunity Policy in the organisation, guidance should also be given so that it is understood by all the workteam.

CHECKS on policy, procedures and practice should take place regularly. Action must be taken where checks show it to be necessary.

RECORDS must be kept to prove that all reasonable practical steps have been taken to achieve equality of treatment, and that those steps have been understood and followed in the workplace. Even if you have followed the law's requirements relating to equality, but you have no records to prove this, you will have the greatest difficulty in disproving a claim of discrimination - or helping your employer to do so.

Now let's try out our 5-point checklist to make sure there is equality of treatment in personnel processes:

RELEVANT FACTORS

PROCEDURES

TRAINING

CHECKS

RECORDS

SELF CHECK 7
Time guide
10 mins

In each of the cases below, use the 5-point checklist to show what is the first, most urgent action that should be taken. Just put a tick against the step you think should be carried out first.

Case 1 In a factory it was found that Asian job applicants had difficulty in communicating easily in interviews, yet usually turned out to be very good workers. What should the Personnel Officer tackle first in order to make the selection process work better?

Relevant factors _____ Checks _____

Procedures _____ Records _____

Training _____

Case 2 In one company it was found that Indians who enquired about jobs were usually rejected out of hand by the telephonists, receptionists, even the gatekeepers, who would say things like: "The job went yesterday", or "Sorry, they're just interviewing for it now", or even "Don't know which job you mean - we've no vacancies like that here". What should be done first to change this situation?

Relevant factors _____ Checks _____

Procedures _____ Records _____

Training _____

Case 3 Asked why so few women, in a large female workforce, became supervisors, one of the managers said: "Oh, we don't get many applications from them - you know what women are like: they just come here for a bit of extra money and a good natter with their pals. They don't want responsibility."

But several of the women, talking the matter over together, said that it was no good applying for promotion because they'd never get selected. The few who tried were usually told that 'men would react badly to being bossed around by a woman'. They didn't believe that was the true reason, though - it was the bosses who didn't like the idea of women getting a bit of power in the workplace.

What should be done first to sort out these problems?

Relevant factors _____ Checks _____

Procedures _____ Records _____

Training _____

The answer to this self check is here in the following words, so you'll need to check out your answers carefully: If you put a tick against each key word in every case you would, in a way, be quite right, because we've already noted that this checklist should be applied to every personnel process at work. However, for this self check we are asked just to look at the first, most urgent step that needs to be taken, so let's check on the answers now. Case 1 The first action to take would probably be to look at the relevant factors in the next job vacancy that comes up. The Personnel Officer should establish with managers and supervisors which are the requirements needed to do that job; analyse those factors; and then ensure that selection of a person is done by reference only to those factors. In this case it may well be decided to use tests of skill rather than just an interview. The test must be designed and used carefully, not in such a way that people of certain races or backgrounds would have difficulty in coping with them even though they had all the skills needed to do the job. Such tests would have helped the Asians in the case who could then have clearly demonstrated that they could perform well in the jobs in question. Analysing jobs by reference to relevant factors, and using these as selection criteria then needs to be made into an agreed selection procedure, and training and guidance should be given to those who make selection decisions in the company (including short-listing decisions). Regular checks will be needed to see if the procedures are being carried out properly, and records must be kept of all interviews, showing in a simple form the qualifications of each applicant, who carried out the selection, what criteria were used, and the results of the selection process. Case 2 The first action to take here is to agree and establish clear procedures which must in future be used by everyone who has contact with enquirers and which must ensure that no such discriminatory behaviour ever occurs again. There must then be training and guidance to help people understand, learn and practice these procedures. Thereafter, regular checks need to be made, and records kept showing what procedures are, what training in them has been given, and the results of the checks. Again, only relevant factors should be used when sort-listing and selecting applicants. Case 3 The most useful first step to take here will probably be checks to establish, using a variety of sources, exactly what is going on in this situation; the views of a sample of the workforce, managers and supervisors need to be discovered. Records will have to be anaylsed, if they exist, to find out how many women have applied for supervisory jobs in, say, the past year, who interviewed them; what selection criteria were used; and the outcomes of the interviews. If records are incomplete then a proper record system needs to be established. After these steps have been taken, the sort of action recommended in relation to Case 1 will be appropriate.

Don't worry if your order of priorities is not exactly the same as the one shown here against each case. We can't work out with complete certainty in every situation which step follows which - the important thing is to go through the five each time, so that in the end, every personnel process in which we are involved results in equality of treatment and opportunity because the following have been applied:

RELEVANT FACTORS

PROCEDURES

TRAINING

CHECKS

RECORDS

EXTENSION 2
page 80

You will find a more detailed explanation of the 5-point checklist in this extension. The checklist itself is based on recommendations from the two Codes of Practice that explain how to avoid discrimination on sex or racial grounds. They too are discussed in the Extension, and together they represent the cheapest and some of the best practical help the supervisor can get in understanding the law and keeping it.

3 **Commitment to Equality**

But simply making sure that what happens at work is technically within the law isn't really enough to ensure that you have good working relationships and that the best use is made of everybody's abilities.

We need commitment by everybody to equality - not only to those whom the law protects but to anybody who, because they are in some way different from most, we are likely to have mistaken ideas and prejudices about. That would include the disabled, the elderly, gays - and you can probably think of more.

---

ACTIVITY 27
Time guide
3 mins

How do these prejudices work? Read this story and then answer the question at the end.

> A man was travelling in the Italian Alps in a car with his young son. As he drove along a mountain road, suddenly, with no warning, an Alfa Romeo sports car appeared, coming straight at them in the opposite direction. The man swerved to avoid it, and in doing so plunged over the edge of the mountain road. The driver of the Alfa Romeo called an ambulance, but it arrived too late to save the driver, who had died instantly. However, although his eight-year old son was badly injured, with multiple fractures and burns, he was still alive. He was rushed unconscious to the accident department of the nearest hospital, where they decided to operate. As he was wheeled into the theatre, the surgeon about to perform the operation saw his face, recognised him, and exclaimed, "My son! My son!"
>
> Who was the surgeon?
>
> * _____

---

People give some very strange answers to the question 'Who was the surgeon?'.

Some think that the driver of the car had adopted the boy, or was the wife's second husband, and that the surgeon was the real father - and in fact either of these could well be a quite reasonable, if somewhat unlikely, explanation.

Others say the surgeon made a mistake - the boy was just someone who looked like his son.

Some have even said that the surgeon was also a priest!

In fact, the surgeon was the boy's mother - and if you wrote that down, take top marks, because it's right, and it's an answer that is almost never given. Yet why not? If someone calls you their son, and that person is not your father, the logical answer must be that they are your mother - but the word 'surgeon' is the complicating factor. In our society we have ready-made, deeply-held ideas about the sort of jobs women hold: our picture of them on the whole is that we don't expect to find them in the kind of high level, high status job of a surgeon. In other words, we have what is called a 'stereotype' of women at work, and it is so strong that it prevents us understanding many situations correctly.

Stereotypes are fixed notions, mental images, which one group holds about another group. Often they are insulting, sometimes vicious, but because they are shared by the group they are seen to be quite acceptable. Often, as with many people reading the story about the surgeon, we don't realise just how strongly stereotypes affect our thinking.

ACTIVITY 28
Time guide
3 mins

Here are two short cases, from quite common work situations.

When you've read them, answer the question at the end of each case.

Case 1 An Indian, Ganesh Patel, started work in a coffee processing plant. The supervisor put another Indian, Pritpal Singh Dhillon, to work with him to show him the job. Patel came to the supervisor a couple of days later and said that he would prefer to work with an Englishman because he would show him how to do the job better than Dhillon would. The foreman agreed to do this, but was puzzled. He thought, however, that it was typical of Indians that they wouldn't help one another. He supposed that Dhillon was reluctant to train Patel in case he worked himself out of a job.

What is the stereotype (fixed idea) in this case?

* _____

The supervisor's analysis of the situation was incorrect. What could have explained Patel's request?

* _____

_____

Case 2 A woman was married, with four children under eleven years old. She had worked evenings as a waitress for 15 years when she answered an advertisment for another similar job in a cafe in Bournemouth. After a few hours in the job, she was sacked by the owner, who said that women with small children were unreliable. The owner was unable to show that her work had been in any way unsatisfactory. He never refused to employ men with small children.

What is the stereotype in this case?

* _____

_____

In case 1, the stereotype is that 'Indians will not help one another' though it has no basis in fact - just one of those mistaken beliefs that can lead to misunderstanding in cases like this. In fact, Patel came from East Africa, and was a Gujaratis speaker. Dhillon came from India, and spoke Punjabi. So they came from different countries, spoke different languages and had quite different backgounds, so naturally communication posed problems for them. To the supervisor, they were just 'typical Indians' yet they were as different from one another as both were 'different' from the supervisor. If you supervise an Indian workforce, you probably got the explanation for this case right - but if you know nothing about Indians, then you were probably and understandably puzzled.

In case 2, the stereotype is 'women with small children are unreliable'. There is no evidence at all for this view, yet in this case it led to direct unlawful discrimination and to great hardship for the woman concerned. Since 30% of all mothers with children under five in this country have a paid job, a truer stereotype would seem to be 'women with small children are reliable' - obviously they contribute a great deal to employment. But how many people know or want to know that statistic?

The cases we have been looking at show how:

* Stereotyping at work can lead to harmful attitudes, and to discriminatory behaviour.

As a supervisor, it is up to you to take the lead in tackling harmful stereotyping and the problems of communication and understanding which tend to go with it.

But how?

## 4 Achieving real equality

The problem of stereotyping and the differences which go with it cannot be beaten overnight. It may have built up over many months, even years. Obviously there is no single, magical cure. It is more a matter of patient and continuous effort and example by the supervisor, so that gradually new and better attitudes and behaviour begin to grow. However, here is an 8-point plan which can be of real help here. If it is followed, definite progress in achieving genuine equality and harmony in the wokplace will be made.

Here's the 8-point plan.

EXTENSION 2 page 80

1 E-xplain to everyone in your workteam the main points about the Race Relations and Sex Discrimination Acts; the free Guides and Code of Practice will help here. Make sure they understand how the law can be broken - especially when there is pressure to discriminate and victimisation.

2 Q-uestion your own work arrangements. Could you vary or adapt existing arrangements and requirements if they conflict with particular needs of some of your workers - prayertimes, religious holidays, special forms of dress?

3 U-nderstand the problems facing certain groups at work, especially women and racial minorities. When you are chatting to them, or looking at their work performance with them, use the chance to find out what they want from work, their own needs and problems, and whether they feel they face any inequality of treatment. Read some of the striking and helpful books and pamphlets that show the sorts of problems these and other groups meet at work.

EXTENSIONS 4 and 5 page 86

4 A-ssess people and situations objectively. In a disciplinary situation, consider whether the employee concerned has been affected by harassment, differences in language and culture, problems of communication and understanding. If someone complains about being discriminatned against, never dismiss this by saying, or thinking, that they're just being over-sensitive.

5 L-ead your own workteam. Your attitudes and behaviour in relation to equality can be more effective than anything else in breaking down harmful attitudes and prejudices. Bring people together on shared worktasks whenever you can, because this is one of the most successful ways of improving people's understanding and knowledge of one another.

6 I-influence where you work. Where you see a need for procedures and practices to be introduced or changed, or for an Equal Opportunity policy to be established, talk with your management colleagues about this. Stress the legal dangers that will arise if the organisation cannot prove that all reasonable practical steps are taken to achieve equality - and the loss to production, services and morale when every person's talents are not being used to the full.

EXTENSIONS 2 and 3 pages 80 and 85

7 T-reat everyone equally - and remember that if you have records to prove this, you will almost certainly never be found liable at law for any discriminatory offence. Try to ensure that unequal treatment, where it is unfavourable and unjustifiable by reference to the needs of the job, is a disciplinary offence. When chances for training, promotion or other benefits come up, draw them to the attention of all who are eligible. Make sure that anyone with poor English knows exactly what the opporunities are, and how to apply for them.

8 Y-ou are the key person! Your workteam need you to instruct, guide and help them. They trust you to judge them and make decisions about them objectively, with only 'relevant factors' in mind. If you find that members of a particular racial group, or of one sex rather than the other, have been under-represented in certain jobs or sections during the previous 12 months, then have a look at the Codes of Practice and talk with your management colleagues - training to help them obtain the needed skills to move into the work in question will almost certainly by allowed by law.

EXTENSION 2 page 80

EQUALITY - the 8-point plan

## 5 Summary

* Supervisors must always avoid breaking the law relating to equality at work. They must also take all reasonable practical steps to prevent discrimination occurring in their workplace. If they do not do this, their employer as well as individual employees may well be found liable for any unlawful discrimination that takes place there.

* Records and up-to-date information should always be available to show what steps have been taken to prevent discrimination occurring, and to prove how people have been treated in the workplace.

* The main areas where discrimination can occur are:

| | |
|---|---|
| Recruitment | Promotion and transfer |
| Terms and conditions of work | Benefits |
| Training | Termination of employment |

* A 5-point checklist to achieve good practice in these areas:

  Relevant factors

  Procedures

  Training

  Checks

  Records

* If a real commitment to equality is to be achieved, then the supervisor needs to take the lead in tackling harmful stereotyping and problems of communicating and understanding.

* An 8-point plan to make the workplace somewhere where everyone really cares about equality, and shows this in their attitudes, behaviour and daily treatment of one another:

  E<u>x</u>plain

  Q<u>u</u>estion

  U<u>n</u>derstand

  A<u>s</u>sess

  L<u>e</u>ad

  I<u>n</u>fluence

  T<u>r</u>eat

  Y<u>o</u>u! EQUALITY

## PART D PERFORMANCE CHECKS

### 1 End Check

You may now review your understanding of the unit as a whole by completng this group of questions. DON'T GUESS AT THE ANSWERS - if you're not sure, flick back into the unit and check before responding.

If you're still unsure, then put a question mark against your response before going on to the next question.

TRUE/FALSE

Respond to each statement by writing TRUE or FALSE in the space provided.

1 Inequality occurs when people are treated unfairly at work. _____

2 Some inequalities can't be avoided. What matters is that if they exist, there's a strong justification for them. _____

3 Where workplace rules or custom conflict with the law, it is workplace rules that must be obeyed. _____

4 A single discrimination case often involves more than one guilty party. _____

5 The law allows positive action to help disadvantaged people, in relation to recruitment, selection and promotion. _____

6 Anyone who knowingly aids another to commit an unlawful act of discrimination shares liability for that act. _____

7 Records don't really matter, as long as you are sure there's no unlawful discrimination going on in your workplace. _____

8 Problems of communication and understanding often cause or increase discrimination at work. _____

COMPLETION

Respond by completing each sentence with a suitable word or words.

9 Inequality at work occurs when a person or group is _____ treated in a less favourable way than another is, or would be, treated in the same sort of situation.

10 Discrimination in employment is unlawful if it is carried out unjustifiably on any of _____ main grounds.

11 The law forbids _____ types of unjustifiable discrimination.

12 Discrimination is justifiable where it is carried out because of the need for a _____ _____ _____.

13 If supervisors do not take all reasonable practical steps to prevent unlawful discrimination occurring, their employer may be found _____ _____ for any discrimination that takes place.

14 Every organisation needs to achieve equality of treatment in their _____ processes.

15 If we could choose one key word to sum all we should do to avoid inequality of treatment occurring, the word would probably be _____.

16 _____ at work can lead to harmful attitudes, and to discriminatory behaviour.

MULTIPLE CHOICE

Respond to each question by putting a tick against the ONE answer which is most correct.

17 If inequality of treatment exists at work, there should be:

a) Reasons

b) Strong justification

c) Records

d) Disciplinary action

18 To decide whether inequality of treamtment has occurred, the first of 4 checks to take is:

a) Disadvantage?

b) Facts?

c) Difference in treatment?

d) Justification?

19 In 1981, women made up what percentage of Britain's workforce?

a) 60%

b) 40%

c) 35%

d) 20%

20 One of these is not an unlawful ground for discrimination in England (although it is in Northern Ireland):

a) race

b) religion

C) nationality

d) colour

21 West Indians and Asians make up what percentage of the total population of Great Britain?

a) 26%

b) 20%

c) 10%

d) 3%

22 One of the following is not forbidden by law:

a) direct discrimination

b) segregation not arising deliberately out of company policy or acts

c) pressure to discriminate

d) victimisation

23 One of the following words does not appear in our 5-point checklist to discover if unlawful discrimination has occurred.

a) justification

b) grounds

c) positive

d) type

24 One of the following words does not appear in our 8-point Action Plan to achieve real equality at work.

a) Question

b) Lead

c) Counsel

d) Treat

END CHECK - Checkout

Audio Tape Side 2 Time guide 35 mins

The answers and explanations for these End Checks are on Side 2 of our Audio Tape. Have your responses with you as you play this tape. As you listen you can check out how well you have done and make notes as you proceed.

## 2 Tutor check

Time guide
60 mins

Read through this case incident, then deal with the questions which follow.

Dmitri, a Greek immigrant worker, has considerable problems speaking and understanding any but very simple English. When he took up his job as an operator in a factory, he was given no real induction by his supervisor, John Ross, who left it to an English worker to start him off.

Dmitri soon failed to cope with the machinery which he had to use. He was therefore moved to very low-level work with people from his own cultural group only. As a result, he learnt little English, and his problems of communication and understanding became even worse. The group of immigrants with whom he was working did not give him much help - indeed the supervisor complained that they were always fighting each other.

Finally, Dmitri caused a major accident as a result of not following the safety instructions he had been given in the factory's Health and Safety booklet that every employee received on joining. The shop steward demanded his dismissal, claiming that Dmitri, like all new workers, had been shown proper safety procedures when he first took up his operator job (by the English worker John Ross put him with); Evans, the steward, complained that Dmitri was 'too thick to take anything in', and that he spent most of his time sulking and complaining, instead of getting on with the work. He was a liability, and would have to go.

Soon after this, Dmitri came to Ross pleading for his job. He said that no-one ever explained the safety procedure to him, and that if he lost his job it would cause great hardship to his family. The supervisor, however, feared that if he did not sack Dmitri, then the union and the English workers would create an uproar - there might even be a strike.

The Company does not have an Equal Opportunity policy, and although the supervisor has an uneasy feeling that he'll have to watch his step here he doesn't really know whether inequality of treatment has occurred here; whether, if it has, it has been unlawful; and how to respond to Evan's demand.

You need only write ONE or TWO sentences against each of the following questions.

1 How can Ross decide whether inequality of treatment has occurred here, and if it has, whether it is unlawful?

2 What should Ross say to Evans now?

3 Should the immigrant worker be disciplined or dismissed?

4 What could have been done to improve the induction given to Dmitri when he first took up a job in the factory?

**Send to tutor**

Now get your answers to your study tutor either by post or handing it over personally. You will receive your tutor's assessment and comment back through the post as soon as can be managed.

## 3 Work-based Project

Time guide 60 mins

Here is our 5-point checklist to achieve non-discrimination and good practice in personnel processes at work.

1 RELEVANT FACTORS

* Make sure that only factors relevant to the needs of the job or situation are the basis for decisions

* Make sure that the relevant factors are clear, and can be measured in a standard way.

2 PROCEDURES

* Procedures to ensure objectivity and equality of treatment should be:

  - Established
  - Known and agreed
  - Followed

  by all in the workplace.

3 TRAINING

* Training and guidance should be given in these procedures, to everyone who has to carry them out, and everyone who will be affected by them.

* Training and guidance should also be given in the organisation's Equal Opportunity Policy, if there is one.

4 CHECKS

* There should be regular checks on procedures and practice relating to all your Personnel processes.

* Action should be taken where checks show it to be necessary.

5 RECORDS

* Records must be kept to prove that all reasonable practical steps have been taken to achieve equality of treatment.

* Records should also be kept showing that those steps have been understood and followed in the workplace (the training, checks and other action taken)

* The records should be able to be used as the basis for effective MONITORING on equality of treatment and opportunity.

* Record Keeping should be done within a clearly defined company policy - or, if there is not yet such a policy, with the full consultation and agreement of management, unions and those on whom the records are to be kept. In this way everyone will understand the reasons for record-keeping, and the benefits flowing from it.

This project asks you to apply this checklist to a number of short incidents.

PART 1

Do EITHER A OR B below:

A IF YOUR ORGANISATION HAS A WRITTEN EQUAL OPPORTUNITIES POLICY:

Get a copy of your organisation's Equal Opportunities policy and the procedures related to it (if any have been drawn up). Show clearly with examples from this written information that the Policy and procedures cover each item in our 5-point Checklist. Where this is not the case, suggest suitable additions to improve them.

OR

B IF YOUR ORGANISATION DOES NOT HAVE AN EQUAL OPPORTUNITIES POLICY

By referring to our checklist draw up a suitable Policy and outline procedures for your organisation. To help you, you could also look at the model local authority policy reproduced in Extension 4.

PART 2

Read each of the cases below, and write in the space provided the action in our 5-point checklist which you think should take place next.

* You find someone making subjective judgements in transfer decisions.

  Point _____

* Your chargehand, with a multi-racial group to supervise, doesn't seem to know about the law relating to equality at work.

  Point _____

* No-one knows how many women in your workplace applied for promotion last year, or the reasons for their selection or rejection.

  Point _____

* Your organisation has a detailed Equal Opportunities Policy, and lots of chages have been made to personnel procedures as a consequence of this.

  Point _____

* You want to make sure that everyone will always be given the same opportunities for benefits like overtime and shiftwork in your workplace.

  Point _____

* You are worried about the possibility of breaking the law on equality in the next round of redundancy decisions that you will be involved in.

Point _____

Send to tutor

Now get your answers to your study tutor either by post or handing it over personally. You will receive your tutor's assessment and comment back through the post as soon as can be managed.

PART E UNIT REVIEW

1 Return to objectives

Having completed your work on this Unit, let's review how you feel about each of our four opening objectives. I will repeat them here and add comment:

You should now be better able to:

* UNDERSTAND WHY EQUALITY AT WORK IS SO IMPORTANT

We have stressed how, unless there is equality at work, there cannot be real harmony and the full use of everyone's abilities. We have also seen how much some groups - especially women and racial minorities - suffer from lack of equal treatment and opprotunity at work. And we have examined many of the ways in which the law on equality can be broken at work. If you now KNOW and FEEL that equality really does matter, and you can explain why to your management colleagues and to your workteam, then you have achieved this objective.

Now to our second objective

You should now be better able to:

* UNDERSTAND WHAT INEQUALITY MEANS, AND HOW IT CAN ARISE

You should now be aware of the distinction between the kind of inequalities that are unavoidable and fully justifiable, and those differences in treatment that cause people to suffer disadvantage, and have no strong justification. We have focussed particularly on stereotyping aand problems of communication and understanding as being major causes of discriminatory attitudes and behaviour. Finally, the 4-point checklist will help you to decide whether unjustifiable inequality is actually going on. If you feel confident in using this checklist, then you will have mastered this objective.

Now to our third objective

You should now be better able to

* KNOW HOW TO AVOID UNLAWFUL INEQUALITY OF TREATMENT TAKING PLACE

There are two 5-point checklists which should have helped you to master this objective. Our checklist to help you to decide whether any inequality of treatment is breaking the law on discrimination; and our checklist to achieve good practice in personnel processes at work. Remember that you will be individually liable for any unlawful acts you commit yourself, instruct or put pressure on others to commit, or knowingly help others to commit. Remember too that through your negligence you can increase the likelihood of your employer sharing liability for individual acts of discrimination. If you now feel you KNOW how to find out if anything unlawful could occur or has occurred, and know what to DO to prevent unlawful discrimination taking place, then you have achieved this objective.

Now to our fourth objective

You should now be better able to:

* **ACHIEVE A REAL COMMITMENT TO EQUALITY IN THE WORKPLACE**

This objective will have been achieved if you FEEL that keeping the law is only a starting point; that your AIM is to build up the kind of atmosphere in the workplace whereby everyone is committed to achieving full equality of treatment and opportunity for each member of the workteam, not only those protected by the law. And that you know how to use the 8-point ACTION PLAN to begin now on the task of building up that commitment.

I hope that you have enjoyed the work you have done in this unit, and found it useful and interesting enough to encourage you to learn even more about the many ways in which real equality at work can be achieved. Good luck!

## 2 Extensions

I recommend that you take up as many of these extensions as you can. They will further increase your understanding and interest. You will also be able to check out a number of the ideas mentioned in the unit. The extra time and effort will prove very worthwhile.

EXTENSION 1

Two Commissions have been established: the Equal Opportunities Commission (Overseas House, Quay Street, Manchester M3 3HN) and the Commission for Racial Equality (Elliot House, 10-12 Allington Street, London SW1 5EH). Their tasks are:

* to help eliminate discrimination
* to promote equality of opportunity
* to keep the law relating to equality under review, and propose amendments

Each Commission has published a Code of Practice (see Extension 4).

The Commissions can:

* formally investigate particular industries or practices, or issues
* help an individual bring a case
* provide legal aid to an individual

Each Commission must make a Formal Investigation before it can use its powers of enforcement. This will usually call for information to be disclosed by the organisation it is investigating. If you suppress or destroy documents, or if you refuse to attend to give evidence, you can be fined up to £400.

The Commissions can take legal action against those who discriminate in advertising for jobs, or who help to, or put pressure on others to discriminate.

A Commission can issue Non-Discrimination Notices if it finds evidence of unlawful discrimination. A Notice lasts 5 years, and will require that discrimination stops, that practices are changed to achieve this, that everyone is told about the practices, and that information is kept available about action taken.

A Commission can also get an injunction against employers and individuals who discriminate or are likely to do so. An injunction is enforceable as contempt of court.

An individual with a complaint about discrimination can, as I have just explained, get certain kinds of help from the relevant Commission. He or she can also take a case to an Industrial Tribunal. The Tribunal has powers including awarding compensation of up to £8,000; recommending the employer takes action on discrimination; and ordering reinstatement if the individual has been sacked.

Compensation can be for:

* actual or future financial losses of wages and benefits

* injury to feelings

In practice, very few applicants get over £1,000 compensation, and in 1982 more than half got less than £200.

Cases must usually be brought within three months of the event complained of, although applications to tribunals under the Equal Pay Act can be made at any time during the employment in question and up to six months afterwards. The person making the complaint must prove their case, and to help them to do this, they can ask the employer to fill in a Questionnaire; this is to give them information which they probably would not otherwise have about the employer's practices, in order to help substantiate their claim. If the employer fails to complete the Questionnaire, then this will probably tell against it in the eyes of the Tribunal.

All organisations except those employing less than six people are covered by most of the Acts relating to equality in employment, and the Equal Pay and Race Relations Acts cover all firms.

EXTENSION 2 The 5-point checklist recommended in Part C is based on recommendations that you will find in greater detail in two clear and excellent practical guides:

* The Race Relations Code of Practice

  (Published by the Commission for Racial Equality)

  £1

* The Equal Opportunities Code of Practice

  (Published by the Equal Opportunities Commission)

  £1.50

Each Commission also publishes several free booklets and leaflets. There are also two very thorough Guides prepared by the Home Office and available free of charge from local Job Centres and Advisory Conciliation and Arbitration Service offices.

* Sex Discrimination: a guide to the Sex Discrimination Act, 1975.

* Racial Discrimination: a guide to the Race Relations Act, 1976.

The Codes do not impose any legal obligation, and like this unit neither is an authoritative statement of the law. But if the steps the Codes recommend are followed in the workplace, then it is most unlikely that unlawful discrimination will occur. Even if an individual commits an unlawful act, if the employer can show, particularly by reference to records, that the steps recommended in each Code have been:

* established

* known and understood throughout the organisation

* followed in all but exceptional cases

then the employer will almost certainly not carry liability for such exceptional cases.

So let's look in more detail at our 5-point checklist, and ask some practical questions about each point, to help you in the management of your workplace. Before we start, it is essential to emphasise the need for all that is planned and done in each of these areas of activity to be agreed with and understood by managers, unions and workforce - achieving equality at work is a team effort, and must have everyone's commitment and co-operation if that effort is to be successful.

## The 5-point checklist

For each of your personnel processes, from recruitment to dismissal, ask yourself:

1 What are the RELEVANT FACTORS that are used as a basis for decisions?

   a) Are they CLEAR AND UNAMBIGUOUS?

   b) Can they be MEASURED in a STANDARD WAY?

   c) Can we PROVE that they are indeed relevant factors?

   d) OR could there be PERSONAL BIAS in deciding what factors are relevant, and how important each is to be in the particular process?

   e) If personal bias could arise, is it likely to lead to DISCRIMINATION?

2 What are the PROCEDURES?

   a) Are they clearly defined and agreed?

   b) Are they always likely to be carried out in the same way, by all individuals, in any situation?

   c) OR could personal bias affect the way procedures are carried out from one person or situation to the next?

   d) If personal bias could arise, is it likely to lead to DISCRIMINATION?

3 Is there TRAINING and guidance?

a) Is there any training and guidance for all those who need to USE the procedures, and those AFFECTED BY the procedures?

b) Who does the training and guidance? Are they skilled enough?

c) How often does training and guidance take place?

d) Does anyone check the training and guidance to make sure they are effective, and have lasting results?

4 Are there CHECKS?

a) Are regular CHECKS taken of all personnel processes to find out what is happening and what results are produced?

b) Does the check tell us:

* whether a process is working well (VALIDITY)?

* whether it achieves the same results no matter who uses it, when, or in what situation (RELIABILITY)?

c) Is there MONITORING of the composition of the workforce? Is there ANALYSIS of the sex and racial origins of the workforce and of job applicants to discover whether there is equality of treatment and opportunity?

d) Is the purpose and operation of any monitoring UNDERSTOOD by everyone, and accepted by them?

e) Is there adequate CONFIDENTIALITY of information?

f) Does analysis of the workforce show any problems? For example, is there evidence that individuals from either sex, or married people, or people from a particular racial group:

* do not apply for employment or promotion, or that fewer apply than might be expected?

* are not recruited or promoted at all, or are appointed in a significantly lower proportion than their rate of application?

* are under-represented in training, or in jobs carrying higher pay, status, or authority?

* are concentrated in certain shifts, sections, workgroups or departments?

g) Are discriminatory behaviour and behaviour likely to encourage or lead to discrimination (including harassment in all forms) DISCIPLINARY OFFENCES? If not, why not?

h) Is ACTION taken when monitoring shows problems related to discrimination?

5 Are there adequate RECORDS?

a) Do they enable anyone to find out exactly what procedures exist, and what is happening in every personnel process in the workplace?

b) Do they enable anyone to measure the success or otherwise of the organisation's Equal Opportunity Policy, if there is one?

c) Specifically, except in cases where the large numbers of applicants would make the task excessively time-consuming and expensive, are there records showing the reasons for selection or rejection of each individual in relation to every kind of selection decision (for jobs, training, promotion and transfer, redundancy, dismissal)?

d) Are there up-to-date and comprehensive records of the sex, marital and ethnic composition of the workforce, which can be used as the basis for effective MONTIORING? If not, here is a simple form, based on a recommendation of the Commission for Racial Equality, which could be used; providing, of course, that this, and all other forms of record keeping, have been agreed and understand by the management, unions and the workforce:-

In order to help me as the supervisor of this section ensure that we have full equality of treatment and opportunity, would you please provide the following information. This kind of record has been agreed between management and unions, and is only being set up to help us to ensure that everyone in this workplace is treated equally. The information will not be used for any other purposes.

---

I am: Married/Unmarried _____

Male/Female _____

Aged: (Tick as appropriate)

Under 20 _____

20 to 30 _____

31 to 40 _____

41 to 50 _____

51 to 60 _____

over 60 _____

I have: Children/no children _____

I would describe my ethnic origins* as:

African _____

Asian (Indian, Pakistan, Bangladesh, Sri Lanka, East African Asians, South East Asians) _____

Caribbean _____

UK _____

Other European _____

Other countries (not included in the above categories) _____

* For the purposes of this form 'ethnic' origins' means where you were born, or where your recent forebears - parents, grandparents - were born.

e) Are there up-to-date and accurate records showing that all reasonable practical steps have been taken to achieve equality in the workplace? Does this information include procedures, training and guidance given, checks taken, and action following checks, where such action was found necessary?

f) Do supervisors and management colleagues realise the vital part played by good records in helping them and the employer to disprove any complaint of discrimination that may be brought in law against them?

EXTENSION 3 Workplace policy and procedures - your organisation will have a number of rules, probably written up in some kind of Rule Book or Employees' Handbook. You must be familiar with these, so make sure you have a copy and check through it every now and again to make sure that you remain familiar with its contents. Make sure that no workplace rule instructs you or anyone to carry out unlawful discrimination - obeying INSTRUCTION TO DISCRIMINATE is itself an unlawful act. Any such rule must be brought to your management colleagues' attention.

Here is an example of a County Council's Equal Opportunity Policy statement. It contains reference to procedures that the council will establish and review, to ensure that the policy is actively carried out.

As part of this policy, the council have set up a Joint Working Group, composed of members, officers and trade unions. The task of the Group is to review and monitor the progress and effectiveness of the policy and develop future policy.

Every employee is given a copy of this Policy statement, and is also given the name of the Personnel Officer to contact if they have any queries. They are advised, too, to contact their union representative whenever this is helpful.

EQUAL OPPORTUNITIES POLICY

The County Council accepts that problems of discrimination are encountered by certain groups and minorities in the field of employment. In order to reflect both the Authority's concern and commitment to ensuring that no policies or procedures in the organisation operate to the detriment of any group, it has adopted a formal approach to the field of equal opportunities.

The Authority's policy was formulated with due regard to the guidelines issued by the Commission for Racial Equality and the Equal Opportunities Commission and with the co-operation and assistance of the Trade Unions.

The responsibility for ensuring non-discriminatory practices lies not only with the employers but also with all members of staff.

**Policy statement:**

"This County Council believes in equal opportunity in all circumstances. As an employer the aim of the policy is to ensure that no job applicant or employee receives less favourable treatment on the grounds of sex, colour, ethnic or national origins, marital status, domestic circumstances, sexual orientation, trade union activity, political or religious belief or is disadvantaged by conditions or requirements which cannot be shown to be justifiable. Selection criteria and procedures will be frequently reviewed to ensure that individuals are selected, promoted and treated on the basis of their relevant merits and abilities. All employees will be given equal opportunity and where appropriate, special training to progress within the organisation. This policy applies to the disabled who have the necessary attributes for the job.

This Authority is committed to a programme of action to make this policy fully effective."

Monitoring

To provide a factual basis for consideration and review of recruitment and employment policies, all job applicants are now asked to voluntarily complete a confidential monitoring sheet. In order to assess the authority's present position a staff audit will be made in the near future. Again this will be done on a confidential voluntary basis.

EXTENSION 4 TUC Workbooks on 'Racism' and 'Working Women' are excellent and striking booklets. They are full of practical illustrations, real incidents, and brief 'Activities' that will enable you to extend even further your understanding of, and ability to do something positive about, inequality at work.

EXTENSION 5 Finally, visit a Tribunal. Telephone them and ask when their next case relating to equality is being heard, and where it will take place. You may find that there are not many cases, but when one does come up, it will be of great interest and value to you to attend.

**These extension opportunities can all be taken up via your Support Centre.**

They will either have the materials or will arrange that you have access to the materials. However it may be more convenient to check out the materials with your Personnel or Training people at work - they may well give you access. There are other good reasons for approaching your own people, for example they will become aware of your interest and you can involve them in your development.

## 3 References

REFERENCE 1 Book: Choice Unit No 88: Supervising and the Law

Author: M S McCall

Publisher: Northern Regional Management Centre

This unit deals with several broad areas of the law which are most likely to affect the supervisor.

REFERENCE 2 Book: Choice Unit No 82: Discipline and the Law

Author: J Stirling

Publisher: Northern Regional Management Centre

This unit is concerned with rules at work - how they can legally be enforced and how the rules and procedures which we accept at work have to reflect the law of the land.

These references can all be taken up via your Support Centre. They will either have the materials or will arrange that you have access to the materials. However it may be more convenient to check out materials with your Personnel or Training people at work - they may well give you access. There are other good reasons for approaching your own people, for example they will become aware of your interest and you can involve them in your development.

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